

LOCAL GOVERNMENT IN ENGLAND

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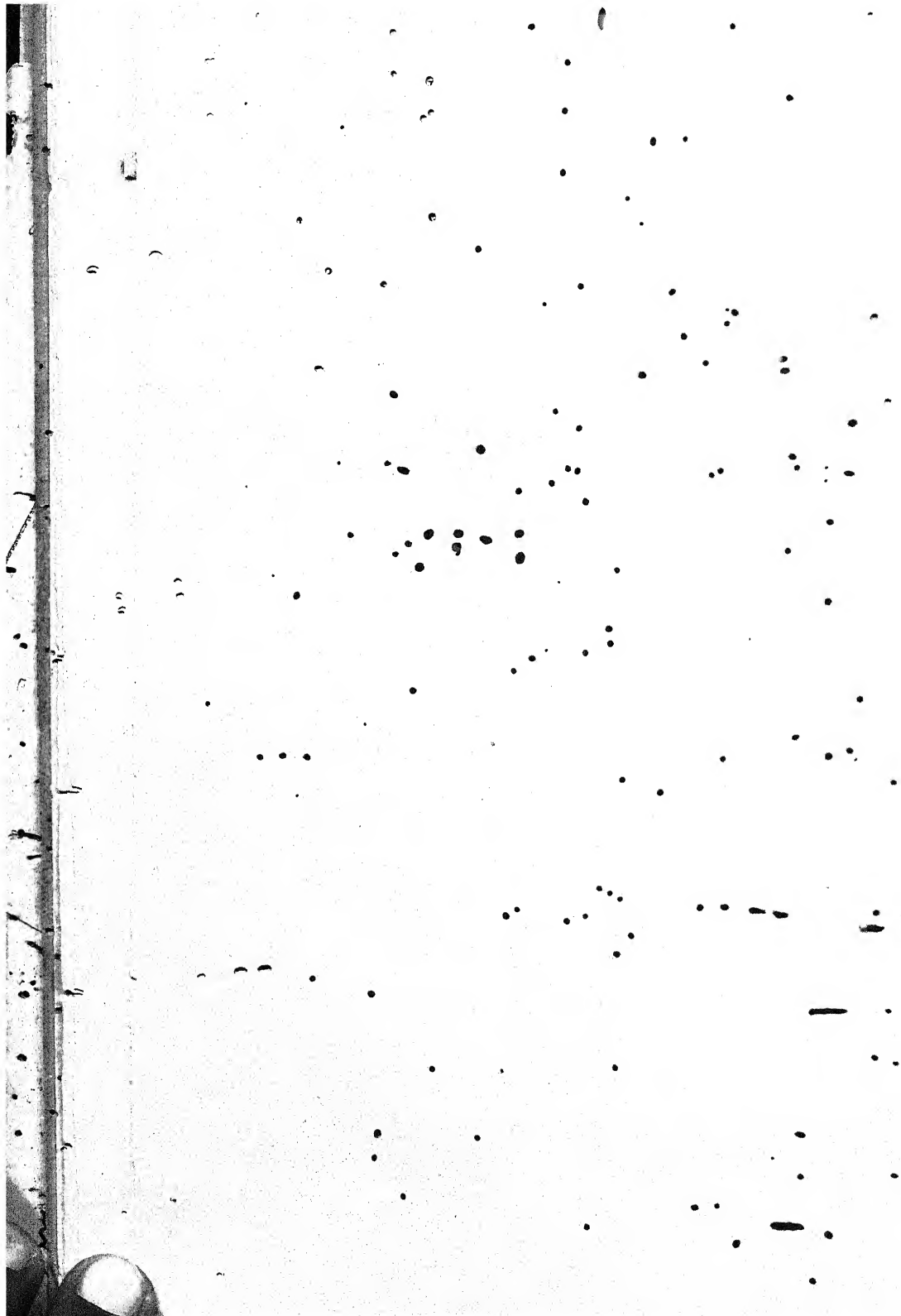
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THE LOCAL AUTHORITIES IN THE ENGLISH
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PART II
THE STRUCTURE AND WORKING OF COUNTY
COUNCILS



PART II

THE STRUCTURE AND WORKING OF COUNTY COUNCILS¹

CHAPTER I

THE AREAS OF COUNTY GOVERNMENT

COUNTY COUNCILS are administrative bodies on which are devolved by statute—first, a number of duties which they must perform; and, secondly, a number of powers which they may adopt. These duties and powers of government are strictly defined by law, and their exercise is restricted in each case to a particular and limited area, which does not coincide with the geographical county, and does not include either county boroughs or the old counties of cities and towns (which are also county boroughs), since both these classes of boroughs are areas for county as well as for municipal purposes. By the

¹ *Literature.*—On the older form of County Government see Gneist, *Self-Government*, chaps. viii.-xviii., xxvi.-lxxxviii.; on the modern form, Vauthier, pp. 1-162. Chalmers, p. 89, and Acland on County Boards in the Cobden Club Essays (1882) may be consulted for County Government in the early eighties, as also may the critical and descriptive account given by Pell, Montague, and Rathbone in their "Local Administration." For the law of the subject, see Macmorran and Dill's exhaustive commentary on The Local Government Act of 1888 (3rd edition, 1898), with all the statutes, orders, and case law relating to County Councils. Blake Odgers' *Local Government* provides a short summary (pp. 190-212); cf. also Wright and Hobhouse, pp. 27-34. For the functions of County Justices in Petty Sessions, cf. C. M. Atkinson's *Magistrates' Annual Practice*; and for their functions at Quarter Sessions, cf. Archbold's *Quarter Sessions*, and *Appeals from Justices of the Peace*, Scholesfield and Hill (London, 1902). *The County Council Times* and similar periodicals, as well as the reports of County Council meetings in local newspapers, have been freely used. The bye-laws, standing orders, and annual reports of many County Councils have likewise been consulted.

Act of 1888 every borough named in the third schedule of the Act, "which on the first day of June 1888 either had a population of not less than fifty thousand, or was a county of itself," was made a county borough, and became for the purposes of the Act "an administrative county of itself."¹ By the same Act London was constituted a separate county with a County Council of its own, though the City of London remains an independent and unreformed anomaly.

The position of the County Borough will be considered in our next chapter. In the present chapter we are concerned with the area of the administrative county properly so-called; and the first point to be borne in mind is that the old historical county remains a local unit intact and unaltered for all purposes of civic life which are not subject to the provisions of the County Councils Act of 1888, and amending statutes. For military, Parliamentary, and, above all, for judicial purposes the old county is still a territorial unit. The militia is organised, County Members are elected, County Justices are nominated, for and from the old county.

As we have already seen in our earlier chapters on the history of local government, the main purpose of the Act of 1888 was the separation of county justice from county administration. Since that date the new counties have stood beside the old historical counties—the former as districts of administration, the latter as districts of jurisdiction. The boundaries of the former are often altered, but substantially the new county occupies the historic ground of the older division. The areas of County Council rule are not arbitrary prefectures but, as Gomme is fond of insisting, "localities properly so-called"—that is to say, administrative districts formed by historical development upon the basis of the old territorial divisions. But the new counties, unlike the old, are incorporated territories, or rather are governed by an incorporated body; for "the council of each county shall be a body corporate by the name of the county council, with the addition of the name of the administrative

¹ Local Government Act 1888, sec. 31. Bootle, Dudley, and Yarmouth were included in the schedule on the strength of estimates which turned out to have been exaggerated. The independence of a county borough is administrative, not judicial, for many of them have no separate court of quarter sessions.

county, and shall have perpetual succession and a common seal and power to acquire and hold land for the purposes of their constitution without licence in mortmain."¹

The County Council therefore, unlike the County Bench (which never was a body corporate), has the right to sue and be sued with the other incidents and attributes of a *ficta persona*. But, as we have said, the new administrative county covers very much the same area as the old geographical county. It is a cluster of the same parishes, though here and there a parish or a slice of a parish has been lopped off or added for the greater convenience of administration. The new counties are the old ones modified to meet the requirements of modern democratic administration. Some, like Lancashire and the West Riding of Yorkshire, have lost much of their population and rateable value owing to the creation of urban districts and the promotion of many large boroughs to county rank. Apart then from the steadily increasing size and number of the towns exempted wholly or in part from county administration and county rating, the new territories governed by County Councils do not differ greatly from the old territories, still judged, though no longer ruled, by the County Bench. In the year 1893, of the administrative counties fourteen were said to be co-extensive with the historical or geographical counties.² There is also, however, a numerical difference. The old counties were only fifty-two in number. There are now sixty-three County Councils with sixty-three county divisions for administrative purposes. The new County of London and the three Ridings of Yorkshire and Lincolnshire bring up the number to fifty-seven. The Isle of Wight is separated from Hampshire, and the counties of Suffolk and Sussex have been divided into two. The Soke of Peterborough and the Isle of Ely are separated from

¹ Local Government Act 1888, Sec. 79 (1).

² Cf. Wright and Hobhouse, p. 33. In the Act of 1888 the new county is called "the administrative county," to distinguish it from the old county, which remains for Parliamentary, judicial, and military purposes. Cumberland and Rutland are the only two English cases in which the ancient county is now co-extensive with the administrative county. Wales has four such—Anglesey, Carmarthen, Montgomery, and Radnor. Cumberland has an additional distinction, for there the "registration county" also coincides with the administrative county. Mr. Edwin Cannan, to whom I am indebted for many valuable suggestions, reminds me that the "registration counties" of the Census and Registrar-General's Reports are "union counties."

Northamptonshire and Cambridgeshire and have County Councils of their own.¹ Lastly, the Scilly Isles are governed by an independent Local Council under a provisional order made by the Local Government Board in pursuance of section 49 of the Act.

The old county is then the basis upon which the Act of 1888 constructs the new administrative county, section 50

providing that "the first council elected under the Act shall, subject as hereinafter mentioned, be elected for the county at large as bounded at the passing of this Act for the purpose of members to serve in Parliament for the county." County boroughs are excluded by the provisions of the Act² from the administrative county. Then come certain changes of boundary made for convenience of administration. Poor Law Unions and sanitary districts had been created in utter disregard of the old county limits within which the county rate was laid. No wonder that boundaries which had been unaltered since feudal times required modification. The Legislature proceeded vigorously. By section 50—

and its boundary
under the Act
of 1888.

Where any urban sanitary district is situate partly within and partly without the boundary of such county, the district shall be deemed to be within that county which contains the largest portion of the population of the district, according to the census of 1881.³

A later section (54) provides more generally for future alterations in the boundary of a county (or borough) which may be deemed desirable by any county (or borough).⁴ Where such a change of boundary is thought desirable by a County or Borough Council the Council may make a representation to the Local Government Board, and thereupon the Board "shall, unless for special reasons they think that the representation ought not to be entertained, cause to be made a local inquiry, and may make

¹ See section 46, which applies the Act to certain special counties and liberties, and provides for joint-committees for the ridings and divisions in regard to such business as was formerly transacted by joint-committees of the justices. The three ridings of Yorkshire have one Sheriff, and the three ridings of Lincolnshire have one Lord-Lieutenant.

² Secs. 31, 100.

³ Sec. 50 (1) (b).

⁴ Cf. the previous chapter on Borough Extension. By section 36 of the Local Government Act of 1894, where an alteration of a county or borough boundary seems expedient for the purposes there mentioned, application is to be made to the Local Government Board for an order under the above-mentioned section (54) of the Act of 1888.

an order for the proposal contained in such representation, or for such other proposal as they may deem expedient, or may refuse such order, and if they make the order may by such order divide or alter any electoral division."

It would be tedious and unprofitable to transcribe at length the minute provisions which are contained in Part III. of the Act of 1888 relating to boundaries;¹ but the general principle by which the Legislature intended that all future alterations should be governed is laid down in express terms as follows:—

In every alteration of boundaries effected under the authority of this Act, care shall be taken that, so far as practicable, the boundaries of an area of local government shall not intersect the boundaries of any other area of local government.²

Under the Local Government Act of 1894, this general principle is developed,³ and the County Council is empowered, in certain cases and under certain conditions, itself to make an order for carrying into effect these provisions as regards the areas of inferior authorities (District and Parish Councils) which are comprised within its boundaries.⁴ This substitution of the County Council for the Local Government Board is a first step in a process of devolution which is likely to be carried much further as the work of Parliament and the central departments of administration becomes more and more onerous.

But, though the process of simplification carried out under the Acts of 1888 and 1894 has been so far effective that none of the smaller areas of administration comprised within the county cut the county boundary, yet these smaller areas cannot be regarded as mere subdivisions of the county division—as parts of a county whole. Those rural districts, for example, which are identical with the Poor Law Unions, are of very different sizes and shapes, and were constituted for purposes of administration with which the county authority has nothing to do. It is true that under the legislation we have been describing, sanitary districts, with few exceptions, and all parishes have been fitted into the administrative area of the county, and are now, to outward

¹ Secs. 50-63.

² Local Government Act 1888, sec. 60.

³ See especially sec. 36, part of which was quoted previously in the chapter on Borough Extensions.

⁴ See the later chapters on District and Parish Councils.

Administrative
subdivisions.

appearance, as indeed they are expressly termed, County Districts. These urban and rural districts, which may be compared with the German *Stadt-und-Landgemeinden*, really bear the main burden of local government. Only the County Authority has already acquired, as we shall see later, certain supervisory powers over them. Last and not least come the parishes, one or more of which are comprised in each urban and rural district. Such are the purely administrative partitions of the new administrative county, and to them must be added the electoral divisions of the administrative county for the purpose of County Council elections.

But there exists side by side with them and independent of them, a subdivision of the old county for the purposes of justice. The old county jurisdiction of the whole bench of Justices in Quarter Sessions is subdivided in all cases, except Rutland, into petty sessional divisions for all the business which the county magistrates have to execute under the Summary Jurisdiction Acts. This business is now almost entirely judicial, and is only concerned with county government proper, in so far as the Justices either in Petty or Quarter Sessions are the only tribunal through which the proceedings by or against the local authorities of the county are enforceable. Every petty sessional division is a district for the granting of licenses to sell intoxicating liquors. The petty sessional divisions were originally based on the old divisions of the county into hundreds, but a re-organisation took place at the beginning of the nineteenth century, and since the Poor Law Amendment Act of 1834 the petty sessional divisions have been made by Quarter Sessions to correspond rather more closely with the Unions, and have gradually, though not invariably, been adopted for police purposes where a county has been divided into police districts under the Police Act of 1856.¹

The petty sessional divisions, as Maitland observes, are "rather a matter of custom, courtesy, and convenience than of law"; and there is also, it should be added, no legal ground

¹ The county police area is, generally speaking, the administrative county, exclusive of those municipal boroughs which have a separate police force. The three administrative counties (ridings) of Lincolnshire form only one police area (cf. Wright and Hobhouse, p. 51).

for the practice that a Justice of the Peace should not act outside his own petty sessional division for petty sessional purposes. Large counties are also divided into coroners' districts, but each of these districts is now, in consequence of the provisions of the Act of 1888, wholly within the area of an administrative county. The last territorial division to be mentioned is of little significance to local government. Every county has one or more County Courts for the trial of small civil matters, and the jurisdiction of each County Court is called a County Court district.¹ So many and various are the meshes, large and small, in the network of county administration and county justice.

In spite of all reform the system still seems very complicated when compared with the simple and orderly plans upon which the local districts of continental administration are laid out. But, from a practical point of view, these complexities and irregularities are no longer so very detrimental to good government. And moreover, by its almost religious conservation of local landmarks, by its careful patching up and renovation of old areas to meet temporary exigencies, and by its steady refusal to alter boundaries except where there is a pressing demand for alteration, the English Parliament has created a territorial system built on history and consecrated by custom, which is far more valued, and therefore far more valuable, than those mathematical departments into which a centralised government, working from above and guided by purely rational and *a priori* principles,

Boundaries:
English and
Continental
policy contrasted.

¹ The internal divisions of English counties may be illustrated by two or three examples: (a) Leicestershire is divided into 54 electoral divisions for the election of the County Council and into 4 divisions for Parliamentary elections. There are 9 petty sessional divisions and police districts, 1 municipal borough, 11 urban districts, and 13 rural districts within the county. Leicester, its capital, being a county borough is excluded. (b) Derbyshire falls into 60 county and 7 parliamentary electoral divisions. There are 15 petty sessional divisions but only 12 police districts. The county comprises 29 urban districts, 15 rural districts, which last are made up of 163 parishes. Derby, the capital, is excluded as a county borough. (c) Nottinghamshire falls into 51 electoral divisions for its County Council and 4 for Parliament. It has 7 petty sessional divisions and 6 police districts which correspond, except that 2 of the former are comprised in 1 of the latter. Besides Nottingham (a county borough and a county itself), there are 3 municipal boroughs, 12 urban districts, and 10 rural districts within the shire.

has cut and carved the land of France. Englishmen have wisely set limits to that centralised omnipotence which the Continent too often admires as the zenith of statesmanship. Having laid down a good general principle for the simplification of areas, they are content to leave its complete realisation to time, and some at least of its applications to local initiation, and they never so refuse to allow local sentiment to enter into their calculations. Thus, in regard to future alterations of boundaries, an initiative is only given to the Local Government Board "in default of such representation by the Council of any county or borough before 1st November 1889." That is to say, if a county or borough which ought, in the opinion of the Board, to have asked for an improved boundary fails to do so, the Board "may cause such local inquiry to be made, and thereupon may make such order as they deem expedient" (sec. 54).

Any scheme or order for the alteration of boundaries made under the Act of 1888 may adjust the property, debts, and liabilities of the areas affected. The financial adjustment may be made by agreement of the parties—that is to say, of any Councils and other authorities affected. The agreement

may provide for the transfer or retention of any property, debts, and liabilities, with or without any conditions, and for the joint use of any property, and for the transfer of any duties, and for payment by either party to the agreement in respect of property, debts, duties, and liabilities so transferred and retained, or of such joint user, and in respect of the salary, remuneration, or compensation payable to any officer or person, and that either by way of a capital sum, or of a terminable annuity for a period not exceeding that allowed by the commissioners under this Act or the Local Government Board.¹

If the parties cannot agree on any of the matters requiring adjustment, the adjustment or difference may be made or determined by an arbitrator appointed by the parties, or—in case of difference as to the appointment—by an arbitrator appointed by the Local Government Board. The arbitrator has power to state a special case and to determine the amount of the costs. The payment of any capital sum required to be paid for the purposes of the adjustment or

¹ See Local Government Act 1888, sec. 62 (1). By the previous section (61) five commissioners were appointed for the adjustment of liabilities under the Act. Their powers expired 30th June 1902.

of the agreement, or of any award or order made by the arbitrator, is a purpose for which a County Council may borrow under the Act of 1888, or a Borough Council under the Act of 1882, and the sum is to be repaid within a period sanctioned by the Local Government Board.

Under the statutory provisions, which regulate the external boundaries and internal divisions of the English administrative county, the most obvious anomalies have been rectified, and the number of changes in county areas grows less and less year by year, as the annual reports of the Local Government Board testify. But the new counties are still, like the old, very irregular in shape and of monstrously unequal size. Equality and regularity might have been attained by a break with the past. That sacrifice has not been made, and the consequence is that the administrative county has preserved local traditions and historical associations at the expense of scientific geography and, to a certain extent, of administrative convenience. The continental idea of an almighty State, which exerts a mysterious and indefinite authority over "subjects," is un-English. This retention of the old local areas with their historical boundaries is only an expression of the English idea of the State as an association or federation of self-governing communities. A recognition of the right of localities to exist and to have their privileges of self-government continued and preserved does not, to English judgment, in the very least impair the political unity of the nation. Great reforms were indeed made in the nineteenth century; but they were reforms which deepened and broadened the local autonomy of towns, counties, and parishes to an extent never realised or even dreamed of in the previous history of the country. So far as the delimitation of local districts is concerned, the Legislature, as we have seen, was content with that minimum of change which seemed indispensable to efficient administration. But the ancient subdivisions of government have not been sacrificed to system. The cold light of rationalism has not been allowed to dissipate the warm spell of history. Rather has the new legislation strengthened old ties and privileges of neighbourhood.

CHAPTER II

THE CONSTITUTION AND ADMINISTRATION OF COUNTY COUNCILS¹

BEFORE the Reform Bill of 1832 and the Municipal Corporations Act of 1835 the county families, as we have seen in the historical part of this work, had a preponderating influence, both socially and politically, not only in the country districts but also in most of the municipal and Parliamentary boroughs of England. The Reform Bill of 1832 was really the beginning of a change in county institutions. For the emancipation of the inhabitants of the town from the administrative and political predominance of the neighbouring gentry was the first step in reducing that overwhelming power which had for centuries been exercised by the rural landlord in English politics. His deposition from the throne of local administration, begun in 1835, was, theoretically, completed in 1888 by the constitution of County Councils to take over the work of the County Justices in Quarter Sessions. The new organisations established in 1888 embody a national conception of genuine county life; and although, as has already appeared, their boundaries differ slightly from those of the old historical counties, they do nevertheless represent historical as well as geographical entities. The constitution of County Councils, like that of Borough Councils, represents a stage in a process by which the relations between the local communities and Parliament have

The reform of
1888.

¹ The statutory constitution of a County Council is provided for in the Municipal Corporations Act of 1882, as amended and applied by the Local Government Act of 1888 (cf. secs. 1, 12, 75-84, 86, 87), and in the County Electors Act, 1888. For the description in the text many standing orders of County Councils and journals containing reports and criticisms of their proceedings have been consulted.

been greatly changed. With the Redistribution of Seats Acts, which have created electoral areas for Parliamentary purposes within the counties in place of the system of county voting, the old theory of the basis upon which the House of Commons is constructed has fallen to pieces. The large towns have been similarly divided. Consequently, instead of representatives being sent by counties and towns, they are now sent by areas arbitrarily carved out of counties and of towns, so that the composition of a modern Parliament has little or no reference to historical considerations. County feeling, therefore, is embodied in the election of representatives rather to the County Council than to the House of Commons, and this tendency is more likely to increase than to diminish as time goes on. As we have already seen in the historical part of this work, the reform of county government in 1888 followed the lines and principles of the Municipal Code. Counties were placed under corporate bodies, with all the powers of organisation possessed by borough Councils, except those expressly excluded under the provisions of the Act of 1888. The difference between town and country has, however, made indispensable some changes in the county copy of the borough model. It was said, and perhaps it is true, by various speakers in the Parliamentary debates on the Bill of 1888, that the Municipal Code was not sufficiently adapted to the requirements of county government. Certainly it is that Mr. Ritchie's programme was to municipalise county administration, and that his programme was carried through by the Act of 1888. As we have already described the constitution and government of the municipalities, the task we are now undertaking, is greatly lightened.

We have already spoken of the incorporation of the County Council. The old county had been merely an association or collection of persons. The new county was not incorporated, but the object was attained by ^{The County} making the new County Council a collective ^{Council a body} ^{corporate.} person. Before the year 1888 the duties and liabilities of the county were the duties and liabilities of its inhabitants. By the Act of 1888, sec. 79, previously quoted, the Council is made a body corporate, and "all duties and liabilities of the inhabitants of the county shall become and be duties and liabilities

of the council of such county." The consequence is that, whereas before it was necessary for the county, in order to take legal proceedings or to procure land, to fulfil certain legal formalities, such as the transference of property in the name of the Clerk of the County, the county is now perfectly free to act as it thinks fit in these matters through its legal representatives, the County Council. And so far as the acquisition of land is concerned it is in an even better position than town corporations, because it may acquire land without license in mortmain.

The constitution of the new county authority is in accordance with the principles of representative democracy. The councillors in whose hands the administration is placed are elected upon a franchise which gives a vote to all the inhabitant householders of the county. The franchise is borrowed from that which prevails in municipal boroughs for municipal elections, the County Electors Act 1888, sec. 2 (1), providing as follows:—

For the purpose of the election of county authorities in England, the burgess qualification—that is to say, the qualification enacted by section 9 of the Municipal Corporations Act 1882,¹ shall extend to every part of a county not within the limits of a borough, and a person possessing in any part of a county outside the limits of a borough such burgess qualification shall be entitled to be registered under this Act as a county elector in the parish in which the qualifying property is situate.

It follows that the household vote, in the wide sense which we have learnt to give to that term in connection with

the municipal franchise, is the basis of the franchise for the election of county councillors. The County Council franchise is in some points wider, in others less wide than the Parliamentary.

As in boroughs, unmarried women who contribute to the rates have a right to the vote, though they may not fill the office of councillor or alderman. In a few respects, however, the provisions of the Act of 1888 are more liberal than those of the Municipal Code. By section 3 of the County Electors Act 1888, the franchise given by the application to counties of the municipal franchise is extended

¹ See vol. i. pp. 247-248.

by the provision that "Every person who is entitled to be registered as a voter, in respect of a £10 occupation qualification, within the meaning of the provision of the Registration Act 1885," shall be entitled to be registered as a county elector. Every man who is a county elector is qualified to be elected for his County Council, but, as in the case of boroughs, the field from which candidates may be drawn is still larger than the electoral area. The county elector must reside within seven miles of the county, but the candidate for a County Council need only reside within fifteen miles. Consequently, a list of persons occupying property in the county and residing less than fifteen but more than seven miles away, has to be made out in accordance with the provisions in the Municipal Code.¹ Peers are also qualified to serve as county councillors if they possess property in the county. So, too, are persons owning property in the county who enjoy in virtue of that property the Parliamentary vote. Moreover, the disqualification imposed upon clergymen and dissenting ministers by the Municipal Code is removed, so that they may be elected aldermen or councillors for the county.²

The most important difference between the election law of county and borough is to be found in a provision with regard to the roll of county electors, that a county elector may be registered in more than one division register,³ although there is a provision in section 45 (6) of the Municipal Code that "a burgess shall not be enrolled in more than one ward-roll." Thus there is introduced into County Council elections a mild species of plural voting which tends to strengthen the weight of the propertied classes.

The County Council electorate is made up, along with the Parliamentary electorate, in accordance with the various Acts controlling Parliamentary and municipal registration,—modified, however, by the County Electors Act of 1888, and by section 76 of the Local Govern-

List of electors.

ment Act of that year. A separate list of county electors is made up by the Clerk of the Peace of every county, who

¹ See County Electors Act 1888, sec. 12, which applies M.C.A. 1882, sec. 49.

² Local Government Act 1888, sec. 2 (2) (a). A woman cannot be elected to be a county councillor. See *Beresford Hope v. Lady Sandhurst*, 23 Q.B.D. 79, and *De Souza v. Cobden*, 1891, 1 Q.B. 687.

³ County Electors Act 1888, sec. 7 (4).

performs in regard to the registration of county burgesses the same functions which a Town Clerk performs for the burgesses of a municipal borough. Like all voters' lists the list of county electors is based on the lists of ratepayers prepared by the overseers, and is duly revised by a revising barrister in the period between 8th September and 12th October. The whole business of preparation is regulated in almost precisely the same way as in boroughs, and a special account is therefore unnecessary.¹ The county register must be completed before 20th December in each year, and comes into operation on 1st January in accordance with the County Councils (Elections) Act 1891, section 2.

The number of county councillors for each county, "and their apportionment between each of the boroughs which have sufficient population to return one councillor and the rest of the county," was determined under the Act of 1888 by the Local Government Board;² and changes in the number and apportionment of councillors due to alterations of the county boundary or electoral divisions may from time to time be brought about through representations made by County Councils to the Local Government Board, the Board rarely or never making use of its discretionary power to refuse such a representation.³ The following table, extracted from a table issued by the Local Government Board in 1888, will serve to show how the Board did the work of numbering and apportionment. Rutland, the smallest and least populous county, has the smallest County Council. Lancashire has the largest, though the 137 county councillors of London represent a much greater population. It should be added that the municipal boroughs represented on County Councils are, of course, non-county boroughs.

¹ County Electors Act 1888, sec. 7. For an account of registration, cf. vol. i. p. 280 *sqq.* The legal definition of County Council electors is contained in section 2 (4) of the Local Government Act 1888. As respects the electors of the county councillors, the persons entitled to vote at their election shall be, in a borough, the burgesses enrolled in pursuance of the Municipal Corporations Act 1882, and the Acts amending the same, and elsewhere the persons registered as county electors under the County Electors Act 1888.

² Local Government Act 1888, sec. 2 (3) (a).

³ Local Government Act 1888, sec. 54 (1) and (2).

NUMBER OF COUNTY COUNCILLORS AND ALDERMEN FOR CERTAIN
COUNTIES, AS PRESCRIBED BY ORDER OF THE LOCAL
GOVERNMENT BOARD.

County or Division.	Councillors.		Aldermen.	Total.
	Municipal Boroughs having sufficient Population to return at least one Councillor.	Remainder, inclusive of those Municipal Boroughs which have not sufficient Population to return at least one Councillor.		
Dedford	Bedford 6	36	17	68
	Dunstable . . . 2			
	Luton 7			
Derby	Chesterfield . . 2	36	20	80
	Glossop 3			
	Ilkeston 2			
Lancaster	Accrington . . . 2	85	35	140
	Ashton - under - Lyne . . . 2			
	Bacup 2			
	Blackpool 1			
	Chorley 1			
	Clitheroe 1			
	Darwen 2			
	Heywood 1			
	Lancaster 1			
	Middleton 1			
	Mossley 1			
	Southport 2			
	Warrington . . . 3			
Leicester	Loughborough . 3	51	18	72
Lincoln (Holland) .	Boston 7	35	14	56
Lincoln (Kesteven) .	Grantham 7	37	16	64
	Stamford 4			
Lincoln (Lindsey) .	Great Grimsby . 6	49	19	76
	Louth 2			
Suffolk (Eastern Division) . .	Aldeburgh 1	46	19	76
	Beccles 2			
	Eye 1			
	Lowestoft 6			
	Southwold 1			
Suffolk (Western Division) . .	Bury St. Edmunds . 6	39	16	64
	Sudbury 3			

After issuing the order from which the above table is taken, the Local Government Board sent a circular letter on 17th August 1888 to the Clerks of the Peace for the counties,¹ with general instructions for the first election of County Councils, and with particular directions for the constitution of electoral divisions, which was required to be completed by 8th November 1888.

A few sentences of the circular letter may be quoted to show how the new machinery of county government was set at work—

In pursuance of the power conferred upon them by the Act, the Board have issued orders determining the number of county councillors for each county, and their apportionment between each of the boroughs which have sufficient population to return one councillor, and the rest of the county. Six copies of the order relating to your county are enclosed. It will, of course, be understood that the number of councillors prescribed by the order does not include the county aldermen. It will now devolve on the Town Council of each of the boroughs returning more than one councillor, and, in so much of the administrative county as is not comprised in a borough returning one or more councillors, on the Court of Quarter Sessions for the county, to determine the electoral division subject to the directions enacted by the Act.

The Board points out that the constitution of electoral divisions for the purpose of County Council elections is provided for in section 51 of the Act. By the

Electoral divisions.	first portion of that section
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The divisions shall be arranged with a view to the population of each division being, so nearly as conveniently may be, equal, regard being had to a proper representation both of the rural and of the urban population, and to the distribution and pursuits of such population, and to area, and to the last published census for the time being, and to evidence of any considerable change of population since such census.

The Local Government Board appears, however, to have considered that the later portions of the section were more important, as they contained "the general principle—that the electoral divisions are to be so formed as not to overlap an urban sanitary district, ward, or rural sanitary district." The Board also pointed out that regard should be had to the boundaries of parishes, for the Act says that every electoral division should, "as far as possible," consist of an entire parish

¹ Who became under the Act clerks to the County Council.

or of a combination of entire parishes. An electoral division may be divided into polling districts; but it is important to observe that only one county councillor may be elected for each electoral division.¹ In other words, the constituencies of a County Council are "single-membered constituencies," instead of being three-membered constituencies like the wards of municipal boroughs.

Save for the "transitory provisions" with regard to the first election of County Councils, there was very little to distinguish the law of county elections from the law of municipal elections until 1891, when ^{The law of elections.} an Act, the County Councils (Elections) Act 1891, was passed "to alter the date of holding County Council elections and to remove doubts respecting the holding of such elections." By that Act the ordinary day of election of county councillors was changed from 1st November to 8th March, or "such day between the first and eighth day of March as the County Council may fix." On that day the county councillors retire together and the newly elected councillors come into office. Nearly all that we have said in a previous chapter upon the preparation of voting lists, nomination, and polling, as well as upon claims and objections, might be repeated here,² but a very few words will suffice. The presiding officer is appointed by the County Council. Nine days before the polling he must give public notice of the place and time of the election. The rest of the proceedings follow the Ballot Act of 1872, as in the case of municipal elections. If a casual vacancy occurs less than six months before the ordinary day for the retirement of county councillors, the returning officer is not authorised to hold an election.³ Moreover, three months are substituted, for the five days of the Municipal Code, "as the time within which a person elected to a corporate office is to accept that office," and twelve months for the six

¹ Local Government Act 1888, sec. 2 (2). The same sub-section provides that an electoral division shall not be called a ward.

² Local Government Act 1888, sec. 75, applies, with slight modification; Parts II., III., and IV. of the Municipal Corporations Act 1882 (as amended by the Municipal Elections Corrupt Practices Act 1884), and Part V., sec. 124, Part XII., Part XIII., the Second Schedule, the Third Schedule Parts II. and III., and Part I. of the Eighth Schedule, to County Councils. But alterations have been made by the County Councils (Elections) Act 1891.

³ County Councils (Elections) Act 1891, sec. 1 (4).

months of the Code as the period of absence which disqualifies an alderman or councillor.¹ The lawful costs of elections, so far as they are not otherwise provided for, are payable out of the county fund as general expenses.

After the election of the county councillors, and at their first quarterly meeting, which is to be held on the 16th of

County
aldermen.

March, or on some day fixed by the Council within the ten days following the election of councillors, the chairman of the Council and the county aldermen are elected, the aldermen forming the indirectly elected element in county as in municipal bodies. Although this deviation from the strict principle of representative democracy—introduced, it will be remembered, in 1835 as a compromise between the reformers and the Tory peers—was sharply attacked in the debates on the County Councils Bill as bad both in theory and practice, the proposal was nevertheless carried without much difficulty by the Unionist majority, and thus another distinctively municipal institution was transferred to county government. The qualification for aldermen is the same as for councillors, and they are elected in the same manner as in boroughs. In one respect only is there a modification of the Municipal Code. The remaining aldermen may not vote for the new aldermen; and thus counties are at any rate free from a distinct abuse, by which in a Town Council the majority may perpetuate itself artificially after it has lost the confidence of the electors. The councillors are elected for three years, and retire together, not by thirds, as in boroughs, but simultaneously.² The aldermen are elected for six years. The chairman—a replica of the mayor—is *ex officio* Justice of the Peace for the county during his term of office, and is relieved of the qualification still required for County Justices by an Act of George the Second. A County Council may also from time to time appoint a member of the Council to be vice-chairman, to hold office during the term of the chairman.

¹ Local Government Act 1888, sec. 75, (14); County Councils (Elections) Act 1891, sec. 5. It may be noted that most of the deviations from the law of municipal elections are contained in the above section 75, and the Act of 1891.

² Triennial elections were probably preferred to annual, partly from motives of economy, partly because less interest is taken in county than in municipal elections.

The number of aldermen is fixed at a third the number of councillors, except in London, where it is one-sixth only, and the provisions for compelling the aldermen and chairman to accept office are identical with those laid down in the Municipal Code for the mayor and councillors.¹

With the election of the aldermen and chairman the composition of the County Council is complete; and having set forth its legal constitution, we may now proceed to consider its inner organisation for the management of business. For this purpose the Municipal Code is not merely imitated but slavishly reproduced. The Act of 1888 provides that, in all those cases in which there is no express provision for County Council procedure the provisions of the Municipal Code shall apply:—

For the purpose of the provisions of this Act with respect to county councils, and to the chairmen, members, committees, and officers of such councils, and otherwise for the purpose of carrying this Act into effect, the following portions of the Municipal Corporations Act 1882, viz. Parts II., III., IV., as amended by the Municipal Elections Corrupt Practices Act 1884, sec. 124 in Part V., Parts XII., XIII., Schedule II., parts 2 and 3 of Schedule III., and part 1 of Schedule VIII., shall, so far as they are unrepealed and consistent with the provisions of this Act, apply as if they were herein re-enacted.²

Consequently County Councils, like Borough Councils, have full power to arrange their own procedure by standing orders and regulations; and they also possess the same power of sub-legislation, "for they may pass bye-laws for the good government of the county and the suppression of nuisances." This last function will be treated of in the ensuing chapter; but it should be observed here that all municipal boroughs are excluded from the operation of the bye-laws of the county to which they belong.³

As in the case of boroughs, so in that of counties, the whole organisation hinges upon the relations of the committee

¹ County Councils, like Borough Councils, may fix by bye-law a fine (which may be of nominal amount) for refusal to take office. In Leicestershire, for example, the fine is fixed at 5s.; in Derbyshire and Nottingham at 1s.; in the Isle of Wight and East and West Suffolk at £1. In Durham, however, the fine is £5, and in Lincolnshire from £10 to £15.

² See Local Government Act 1888, sec. 75, which is abbreviated above.

³ Local Government Act 1888, sec. 16.

to the Council on the one hand, and to the paid officials on the other, and at this point we find a material deviation of county from municipal government. The administrative work of a County Council necessarily involves a larger system of decentralisation on account of the much greater area that has to be administered.¹ In the towns the cardinal principle of English local government—namely, that a locality should be managed by a majority of its inhabitants—had been reconciled with the needs of administration by splitting up the

Council into a number of committees responsible to and controlled by the Council as a whole.

But the Legislature in framing the constitution of County Councils was well aware that in this respect the municipal pattern must not be too closely followed, but must be adapted to the peculiar requirements of county government. It is true that a County Council appoints its committees under an applied section of the Municipal Code.¹ But the greater extent of the area, the greater variety of occupations, and lastly, the circumstance that many of the duties and powers conferred upon County Councils by Parliament could only be performed and carried out in conjunction with the neighbouring counties and county boroughs, all pointed to the desirability on the one hand of giving the county committee a position of greater independence than that assigned by the Municipal Code to the committees of a Borough Council, on the other of making it possible for a County Council to combine with neighbouring County Councils and other local authorities by the formation of joint-committees.² How wide are the powers of delegation and co-operation which a County Council enjoys, and how much they exceed the similar powers conferred upon municipalities, will be made clear by an examination of the Act.

In the first place, a general power of delegation subject only to certain express exceptions is conferred on County Councils by section 28 (2) of the Local Government Act of 1888, which runs as follows:—

¹ Municipal Corporations Act 1882, sec. 22, as applied by Local Government Act 1888, sec. 75.

² Cf. Local Government Act 1888, secs. 28, 30, 81, 82. Also Standing Orders and Regulations made by County Councils for this purpose.

The county council shall, with the exceptions hereinafter mentioned, have power to delegate, with or without any restrictions or conditions as they may think fit, any powers or duties transferred to them by or in pursuance of this Act, either to any committee of the county council appointed in pursuance of this Act, or to any district council in this Act mentioned; the county council may also, without prejudice to any other power whether to appoint committees or otherwise, delegate to the justices of the county sitting in petty sessions any power or duty transferred by this Act to the county council in respect of the licensing of houses or places for the public performance of stage plays, and in respect of the execution as local authority of the Explosives Act 1875, or of the Act relating to contagious diseases of animals.

It would, however, be contrary to English ideas to allow the full power of the purse to a mere delegate, and accordingly the statute goes on to provide "that the County Council shall not under this section delegate any power of raising money by rate or loan." So much for the ordinary committees of a County Council, supplemented as they are by an entirely new feature—the power to delegate work to an inferior authority, the District Council, and in certain cases to a co-ordinate (judicial) authority, the County Bench. But the Act also provides, as we have observed, for co-operation with other local bodies. By section 81 (1) and (2)—

Any county council or councils, and any court or courts of quarter sessions, may from time to time join in appointing out of their respective bodies a joint-committee for any purpose in respect of which they are jointly interested.

Any council or court taking part in the appointment of any joint-committee under this section may from time to time delegate to the committee any power which such council or court might exercise for the purpose for which the committee is appointed.

But nothing in this section is to "authorise a Council to delegate to a committee any power of making a rate or borrowing any money." County Councils, then, have two main classes of committees—first, the ordinary committee of the municipal type, appointed by, and usually out of, the Council by the Council itself, to control some branch of county administration (but supplemented by the above-mentioned powers of delegation); and, second, the so-called joint-committee, which may be composed of members of County Councils, of Courts of Quarter Sessions, and of County Borough Councils. Under this second class comes the Standing Joint-Committee

of Justices and County Councillors, which is established by the statute of 1888 in every county for purposes of police. It has been noticed that as a substitute for the ordinary committees of the class first mentioned a County Council may delegate work to a District Council within its area, just as under the Act of 1894 a Rural District Council may delegate work to one of its own Parish Councils. ✓

Both the ordinary and the joint-committees are to be regarded as tools in the workshop of the County Council, which the Council may take up or put aside at discretion, according to the nature of the work which it has to perform. A County Council may form and dissolve committees at its pleasure, and the law sets no limit to their number or strength. There are, however, also four statutory or obligatory committees; for every County Council must have a Finance Committee, and an Education Committee, and must contribute, in the first place, to the Standing Joint-Committee composed half of Justices, half of Councillors, after the model of the municipal Watch Committee, for the management of the county police; and, in the second place, to "the visiting committee" (of Lunatic Asylums) under sec. 169 of the Lunacy Act 1890. These

Elasticity of the committee system. four statutory committees which a County Council is obliged to appoint stand in a different relation to the Council from the committees and joint-committees which it is empowered to appoint. The connection of the free or non-statutory committee with the Council, or authorities they represent, is perfectly elastic, being governed by provisions which differ from those of the Municipal Code:—

Every committee shall report its proceedings to the council by whom it was appointed, but to the extent to which the council so direct, the acts and proceedings of the committee shall not be required by the provisions of the Municipal Corporations Act 1882 to be submitted to the council for their approval.

In the case of a joint-committee the councils and courts appointing the joint-committee shall jointly have the powers given by this section, and the provisions of this section shall apply accordingly.¹

Further, a County Council (or in the case of a joint-committee the authorities composing it) may from time to time "make, vary, and revoke" regulations as to the quorum

¹ Local Government Act 1888, sec. 82 (2) and (3).

and proceedings of a committee, and its sphere of authority. Subject to such regulations, the proceedings, quorum, place of meeting, and area of such a committee, whether within or without the county, are to be such as the committee may from time to time direct.¹

Thus the existence and powers of committees and joint-committees depend entirely upon the will of the authority or authorities by which they are constituted and composed. They are simply delegates. But from the standpoint of constitutional law, the Act of 1888 marks an important deviation from the Municipal Code. The acts and resolutions of a municipal committee have no validity until they are confirmed or approved by the Council; but a County Council, under the provision above quoted, may lawfully empower its committees to put its resolutions into force before obtaining the approval of the Council. All that the Act of 1888 insists on is that every committee shall report its proceedings to the Council, and shall not raise money by rate or loan. If a committee abuses its independence, the County Council's remedy is to withdraw the gift.

This modification of the committee system familiarised in England by the Municipal Code was suggested by the conditions of county government. In many counties the distances are considerable; the county councillors live far apart; whatever place be chosen for the County Council's offices is certain to be inconvenient and difficult of access to some of the members. Frequent meetings of the Council are therefore impracticable. But if the action of committees were fettered by a Council which met only four times a year, the work of government would be unduly protracted. To promote efficiency and expedite administration, it was necessary to give these larger powers of devolution to the representative bodies in counties; and the municipal rule that no committee may be empowered to act without the approval of the Borough Council has been whittled down in the case of a county committee to the duty of reporting proceedings and to a prohibition against laying a rate or borrowing money.

Besides the above principles, which apply *mutatis*

¹ Local Government Act 1888, sec. 82 (1).

*mutandis*¹ equally to the ordinary standing committees of a County Council and to the joint-committees on which it is represented, the Act has added some special provisions in regard to joint-committees. The members of a joint-committee are to be appointed at such times and in such manner as may be from time to time fixed by the Council or Court, and shall hold office for such time as may be fixed by the Council or Court. But where any members of a joint-committee are appointed by the County Council, the committee is not to continue for more than three months after a triennial election of the County Council. Many County Councils have a standing order that all committees shall be reconstituted at the statutory general meeting of the Council in the month of March.² The members of joint-committees are to be appointed by the several Quarter Sessions and Councils concerned, in such proportions and in such manner as they may respectively arrange. If they fail to arrive at an understanding the arrangement is to be made by a Secretary of State.³ The costs of a joint-committee are borne by the County Council, or if more than one Council is concerned, in such proportions as the Councils may agree.⁴ We have next to consider the special status of

The Standing
Joint-Committee.

the two statutory committees. The Standing Joint-Committee is composed of an equal body of Justices and Councillors appointed by the Court of Quarter Sessions for the county and the County Council. The chairman is appointed by the committee, or, in case the votes are equal for two or more persons, the choice between them is to be made by a lot—a singular revival of a device once favoured by Athenian democracy. The numerical strength of the committee is decided by agreement between

¹ *E.g.* sec. 81 (4): "Subject to the terms of delegation, any such joint-committee shall, in respect of any matter delegated to it, have the same power in all respects as the councils and courts appointing it, or any of them, as the case may be."

² *E.g.* Durham Standing Order 26; Derbyshire Standing Order 27; Lancashire Standing Order 53; Isle of Wight Standing Order 64; Bedfordshire Standing Order 25. In Nottinghamshire and in East and West Sussex the members of standing committees are elected for three years; a third retire yearly in alphabetical order, but are eligible for re-election.

³ Local Government Act 1888, sec. 81 (7).

⁴ Local Government Act 1888, sec. 81 (6).

the Council and Quarter Sessions, or failing such agreement, by a Secretary of State. The Standing Joint Committee is established, in the words of the statute, "for the purpose of the police, and the clerk of the peace, and of clerks of the Justices and joint officers, and of matters required to be determined jointly by the Quarter Sessions and the Council of a county." But its work will be treated of in the following chapter. A County Council has no power to review, though it is compelled to provide for the expenditure required by the Standing Joint-Committee in the performance of its statutory duties. In the words of the Act, "all such expenditure as the said joint-committee determine to be required for the purposes of the matters above in this section mentioned, shall be paid out of the county fund, and the Council of the county shall provide for such payment accordingly." The expenses of the committee have to be borne by the County Council alone, because since the Act of 1888 was passed the Justices in Quarter Sessions have lost all their powers of local taxation, and have no funds or revenues at their disposal.

Another statutory committee, established like the Standing Joint-Committee by special provisions of the Act of 1888, is the Finance Committee, to which most important duties are assigned. By section 80 (3)—

Every county council shall from time to time appoint a finance committee for regulating and controlling the finance of their county; and an order for the payment of a sum out of the county fund, whether on account of capital or income, shall not be made by a county council except in pursuance of a resolution of the council passed on the recommendation of the finance committee, and (subject to the provisions of this Act respecting the standing joint-committee) any costs, debt, or liability exceeding fifty pounds shall not be incurred except upon a resolution of the council passed on an estimate submitted by the finance committee.

The Finance
Committee.

Here we certainly have a remarkable development of the committee system as we have known it in boroughs. The Legislature, seeing that the Municipal Councils had usually found it necessary to set up a Finance Committee to watch expenditure, determined to take the further step of compelling County Councils to appoint a Finance Committee, and has not only given that committee power to supervise the spending departments, but has made it the sole and authoritative

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channel through which estimates for any considerable sum may be submitted to the Council. The County Council itself cannot spend, or incur liability for, a sum of more than £50 until that sum has been sanctioned by an estimate of the Finance Committee. The expenditure of the Statutory Joint-Committee is the only county expenditure which escapes the control of the Finance Committee. We might be tempted to regard this invention as an inversion of the committee system. So it may be in the letter, but not so in the spirit; for without that continuous and detailed control over expenditure which is exercised by the Finance Committee, it is difficult to see how a County Council, meeting at long intervals, would be able to maintain any real and effective supervision of county finance. The very laxity of the relationship which for the convenience of administration a County Council is allowed to establish, and often does establish, between itself and certain of its committees, is a strong argument in favour of the Finance Committee; for that committee operates decisively in the direction of unity by exercising a strong pressure on all departments of county government. Thus its control over county expenditure resembles that of the Treasury over national expenditure.¹ Another statutory committee has been established by the Education Act 1902. The peculiar constitution and powers are considered in a later chapter.²

To return to the ordinary committees which a County Council is free to establish. These, like the committees of a municipal borough, are either "standing" or "special." A Standing Committee is usually regulated by the Standing Orders of the Council, which prescribe both their numbers and their purposes. Standing Committees correspond to the various branches of county administration: main roads and bridges, general purposes, local government, sanitary or public health, contagious diseases (animals), asylums, allotments, county buildings, industrial schools, reformatories, county assessment, parliamentary. In many counties there exist, besides, a

The work of
committees.

¹ The absence of such a control over municipal expenditure has, as we have already seen, been brought before the notice of a Royal Commission. Cf. Royal Commission on Amalgamation of London 1894, Minutes of Evidence, Q. 9548-9491. On the Finance Committee, see further, Chapter IV.

² See pp. 224-236 on "the local organisation of education."

Special Executive Committee and a Boundary Committee for regulating the boundaries of the county and of the districts which it contains. Some counties, moreover, have a "Licensing of Stage Plays Committee" and other special committees to deal with special enterprises or proposals. All these committees are subject to further subdivisions—on the one hand into sub-committees for subdivisions of work, and on the other hand into local subdivisions for large branches of administration which it is convenient to divide topographically. The relation of sub-committees to their committee is prescribed in all Standing Orders of County Councils in such a way that the sub-committee shall only be qualified to take a conclusive step if it have special power to do so conferred upon it by the parent committee. Some modifications, as we have seen, are necessary in applying these principles to joint-committees, for in the joint-committees the County Council often operates with other authorities beyond the bounds of its own territory—either with other counties or with county boroughs.¹

¹ It may be well to give here three concrete examples of county organisation in 1899.

I. The County Council of Derbyshire had 13 Standing Committees and 1 Standing Joint-Committee. The first were—Asylum (12 members—quorum, 3), Boundaries (22 members—quorum, 5), Bridges and Highways (28 members—quorum, 7), County Rates (12 members—quorum, 3), Executive (15 members—quorum, 3), Finance (14 members—quorum, 5), General Purposes (14 members—quorum, 5), Parliamentary, 9 members—quorum, 3), Public Health (15 members—quorum, 5), Reformatories (10 members—quorum, 3), Small Holdings and Allotments (11 members—quorum, 3), Technical Education (21 members—quorum, 4), Weights and Measures and Analysts (10 members—quorum, 3). The County Council also sent from two to three delegates to serve on joint-committees of twenty-four secondary schools and high schools and other special institutions receiving subventions from the county, and also six delegates as conservators on the Trent Fishery Board. Eight members of the County Council sit on the Statutory Joint-Committee with the County Justices.

II. The Lancashire County Council. This great County Council had, besides the Statutory Standing Joint-Committee (18 Justices, 18 County Councillors), nine standing committees, viz.:—Executive Cattle Plague (36 members), Finance (27 members), Allotments (27 members), Small Holdings (27 members), Technical Instruction (27 members), Main Roads and Bridges (36 members), Adjustment of Financial Arrangements between County and County Boroughs (9 members), Parliamentary (18 members), Public Health Committee (18 members). There are, besides, the following joint-committees:—The Lancashire Asylums Board, established by Provisional Order and Asylums Acts, consisting of 87 members—38 of whom are appointed by the County Council, and 49 by County Boroughs; County

The invention of joint-committees has proved a most efficient means of promoting active and intelligent co-operation between local authorities in England. The joint-committee acts as a useful antidote to that extreme parochialism which a strong sentiment for local autonomy is so apt to develop; but in correcting the tendency towards parochialism the Legislature has avoided any encroachment on the principle of local autonomy by entrusting both the composition and organisation of joint-committees entirely to the local authorities which happen to be concerned. To the moral value of voluntary co-operation between representative bodies must be added the savings which may often be effected by what is known as the economy of large operations. And this economy, which in continental countries can only be obtained at a sacrifice of local initiative by the central government of an empire, a Rate Committee (27 members of the County Council, 15 of the Boroughs); Manchester Assize Committee (5 members of County Council, 7 of the Boroughs). The Finance, Plague, and Highways Committees are split up into many sub-committees, which administer local subdivisions. Delegates from Cheshire, Cumberland, and the county boroughs of Lancashire, and from a number of fishery authorities, co-operate with the Lancashire County Council on the Lancashire Sea Fisheries Joint-Committee, and on the Mersey and Irwell Watershed Joint-Committee. The Council also co-operates with the County Councils of Westmoreland and Cumberland on a second Fisheries Board, and with Yorkshire on two other fishery authorities, and—lastly—with a number of county boroughs on the Ribble Watershed Joint-Committee. To the formation of these joint-committees the Council contributes from its 35 aldermen and 105 councillors, who, it may be well imagined, are not too numerous for the work they have to perform.

III. Lincolnshire (Kesteven) is an example of a complicated organisation, being one of the three County Councils which govern separately and in combination the three county divisions of Lincolnshire. It had the following committees:—(1) The Statutory Standing Joint-Committee, consisting of 8 Justices and 8 County Councillors. (2) The Joint Police Superannuations Fund Committee, composed of 28 members—8 from Kesteven, 14 from Lindsey, 6 from Holland. (3) Finance Committee—22 members. (4) County Rate Committee—17 members. (5) Highways—30 members. (6) Diseases of Animals Act Executive—31 members. (7) General Purposes—29 members. (8) Allotments—16 members. (9) Technical Instruction—17 members. (10) Asylum Visiting—15 members. (11) Railways and Canals—7 members. (12) Small Holdings—9 members. The last ten of these committees were composed entirely of members of the Kesteven County Council. But there was also a general or joint-committee for all the three divisions of Lincolnshire, called the County Committee, and composed like that which manages the Police Superannuations Fund. Lastly, there were two special committees for licensing in the municipal boroughs.

kingdom, or a province,—for such transactions would not come under a continental conception of local government,—is to be had in England, thanks to the legislation of 1888, without any central intervention, by mutual agreement between the local authorities concerned. Without a private Act or provisional order—without even the necessity for an election—a large representative body is formed with power to establish and control some large undertaking for the purpose of draining, it may be, or supplying with asylums or hospitals, some wide and hitherto entirely dissociated area.¹ Sometimes, indeed, Parliament in its wisdom, and on grounds of public policy, itself constitutes a joint-committee or board by private Act, and compels the local authorities concerned to appoint delegates;² but such action is not likely to be taken, except in response to a strong local demand.

A statutory (quarterly) meeting of the County Council is held in March, and at this meeting the Council usually appoints all its committees for the year and nominates delegates to serve on the various joint-committees in which it takes part. In this task it is assisted by the recommendations of the General Purposes Committee,³ or of a Selection Committee specially appointed for the purpose.⁴ The numerical strength of committees varies very widely. In many counties the important committees are committees of the whole Council. The quorum, however, is generally very small in comparison with the nominal strength of a committee—usually five, and for sub-committees two or three. At its first meeting every committee has to appoint its chairman and vice-chairman, who are *ex officio* members of all the sub-committees into which the committee is divided, just as the chairman and vice-chairman of the County Council are *ex officio* members of all the committees and sub-committees into which that body is divided. As a rule no member of a County Council may preside over

Chairmen,
attendance, and
procedure of
committees.

¹ Many large towns like Manchester supply neighbouring local authorities with water at prices fixed by agreement. The advantage of a joint-board or joint-committee is, that every area concerned has a voice in the management.

² Cf. the Thames Conservancy Board, the West Riding Rivers Board, the Trent Fishery Board, the Witham Fishery Board, etc.

³ Cf. the Standing Orders of the County Councils of Derbyshire and Staffordshire.

⁴ Cf. the Standing Orders of the County Councils of Lincolnshire and Nottinghamshire.

more than one committee. Any member of the Council is usually entitled to attend any committee and listen to its deliberations; but he may be excluded if the committee resolves to hold a secret session. Every committee is bound to keep an attendance book. Committees apply to their own debates the standing orders of the Council with such modifications as may be necessary. Decisions are arrived at by a simple majority, and, in case of equality, the chairman is allowed a second (casting) vote. As a general rule, the formal summons to all committee meetings is issued by the clerk of the Council; but it may also be issued by the chairman or his representative. By the Standing Orders of most County Councils¹ all standing committees are bound to meet at least four times a year and report to the Council. The lines on which county administration is carried on have already been indicated. Subject to the law and to the standing orders, each committee does the work assigned to it, reporting fully to the Council. All the proceedings, resolutions, and reports of committees must be printed and sent to every member of the Council at a proper time before the Council meets. Further, the minutes of every committee must lie open for the inspection of every member of the Council on the day of the meeting, so that every member has an opportunity of making himself acquainted with all that is being done in every branch of county administration. These precautions are the more necessary because, as we have seen, apart from financial matters the approval of the Council is not required for the proceedings of its committees. It follows from the independent position usually given to committees that it is not necessary for the Council to enter into a minute examination of the details of their work. Indeed, such a course would not be practicable, and, were it so, would interfere with the expeditious handling of business. The law itself, as we have seen, completely relieves a County Council of one important branch of county administration; for the Standing Joint-Committee which controls Police is exempt even from the financial supervision of the Council. A report only has to be sent in. The "visiting committee" of a county asylum is appointed under the provisions of the Lunacy Act 1890.

¹ *E.g.* Cumberland, Standing Orders 30.

Speaking generally, the main duties of the Council are to keep an eye on the administration as a whole, to represent the county in what may be called its "foreign" relations, to lay down general directions for the committees which preside over the several branches of administration, and to see that those directions are adhered to. * Re-
The proceedings and procedure of the Council itself.

presentation, control, and direction of policy—these are the main duties of the County Council acting as such. For these purposes only a small number of sittings are necessary. Four there must be, by law, in the year; and in practice there are seldom more than ~~five~~ ^{four}, the dates of which are fixed beforehand at the beginning of the year. The committee system makes it possible for the Council to hold few meetings, and the distances to be traversed make it impossible to hold many; for how could men be expected to accept an honorary office which involved constant loss of time and money in travelling, and for which, not even travelling expenses are allowed? By resolving itself into committees and local sub-committees a County Council greatly reduces the difficulties which arise from the size of its administrative area and the long distances which have to be traversed. Only by localising the work can the people be really represented in county administration. Even so, county government is hardly democratic. It has been described as "government by horse and trap," i.e. by men who can afford to keep a horse and a vehicle.

Externally, the ordinary relation between the County Council and its committees is expressed in the statement that the reports of committees are not usually submitted to the Council for formal approval as a whole. Only if special attention in writing is called to some point in one of the reports can a debate be raised and the decision of the Council taken.¹ It is generally left to the members of a committee

¹ A distinction must be drawn between committees which are full delegates and those which may not act independently of the Council. The first, as a rule, require no express approval; they act on their own responsibility, except for the control which is exercised over expenditure, though they are subject of course to the orders and bye-laws of the Council, and are bound to report their proceedings. Committees of the second class have no such independence, and their relations to the Council resemble those of Municipal Committees. But committees of the first class are not only the most

to decide which of its proceedings should be referred to the Council, for they are obviously more competent to decide than other members who have only been able to acquaint themselves with the work of the committee by perusing its reports. What usually happens is this: the chairman or some other member of the committee draws attention to important "recommendations" in the report of the committee, formulates them as motions, and proposes them at the proper time to the Council. By the rules of procedure committees are bound to lay all important questions, upon which they require the decision of the Council, before the Council in the manner above described. This procedure is the natural consequence of the statutory provisions, which have been already quoted, for exempting the Council from the necessity of approving acts not involving expenditure. If no motions are brought forward, "the report of the committee is adopted" or "received."

For the rest, the management of business at meetings of County Councils follows the precedents of municipal procedure very closely. As the Act of 1888 borrows large portions of the Act of 1835, so the sub-Legislatures created by the later have borrowed freely from those created by the earlier Act. We find in counties the same Standing Orders as in boroughs with regard to notices of motions, amendments, and generally for the conduct of debates. Thus the rule that previous notice is not required for points of order, for motions to postpone or close a debate, and to adopt or remit a report, or for a motion that the Council resolve itself into committee, will be found in the Standing Orders of County as well as of Borough Councils. The last rule is peculiarly characteristic of English bodies. If the motion is carried it enables members to revive

characteristic, but also by far the most important. Thus in the province of technical education the whole administrative power of the Council was handed over unreservedly to a committee. In the small counties, as we might expect, just as in the small towns, the Councils are more inclined to tie the hands of their committees. The County Council of the West Riding of Yorkshire is one of the largest, and nearly all its powers are divided between ten standing committees, whose acts do not require approval except when they involve an expenditure of more than £50, or are made the subject of a special reference. And generally speaking, County Councils have taken more or less full advantage of that permission to delegate powers to committees which is the most characteristic mark of the Local Government Act of 1888.

a debate, and so to evade the rule which prevents them from speaking twice on the same subject.

A record is kept of the proceedings at each Council meeting, and is afterwards printed and distributed among the members. A complete agenda must be posted along with the summons to each County Councillor, at least three days before the sitting, and must also be affixed to the doors of the County Offices. The following is the ordinary arrangement of the agenda:—(1) The minutes of the last sitting are read and passed. (2) The business (if any) especially required to be done at that sitting by Act of Parliament is then brought forward. (3) Deputations (if any) are received. (4) Correspondence is read, questions asked, or business brought forward by special permission of the chairman. (5) Matters which have been postponed from a previous sitting are dealt with. (6) Reports of Committees are laid before the Council and questions arising out of them are dealt with. (7) Recommendations of the Committees are brought forward in order by way of motion.¹

By resolution of the Council the order of proceedings can be altered if it is desirable to give precedence to some pressing matter. The length of speeches is frequently restricted by the Standing Orders of the County Councils in order that business may be expedited and time saved. A sitting may be adjourned; but at an adjourned sitting only the agenda of the original sitting may be discussed. The sitting of the Council is usually held in the same place, in the county hall of the county town, and begins, as a rule, before mid-day. A quarter of the members must be present to form a quorum and to enable the Council to act. All resolutions may be taken by a bare majority, and in case votes are equal, the chairman gives the casting vote. The chairman's functions consist almost entirely in the management of business at the meeting of the County Council.² Only to a very small extent does he represent the county on public occasions, for the Lord-Lieutenant still stands at the head of the old county and takes precedence on great occasions, although he no longer has any legal authority in the administrative government of

¹ Cf. *e.g.* for Standing Orders—Isle of Wight 25; Leicestershire 3; Cheshire 3, etc.

² Local Government Act 1888, sec. 2 (5).

the county. Yet the office by its survival illustrates that declining but still subsisting preponderance which the landed aristocracy has exerted from time immemorial in the administration of county justice and the organisation of the county militia.¹

The last of the three factors which compose the organisation of all local bodies in the English system of local govern-

ment are the paid officers who execute the resolutions of the County Council and the orders of its committees.² With a few necessary changes, the permanent staff of a county is regulated like that of a borough on the lines prescribed by the Municipal Code. In regard to the appointment, pay, pensioning, and dismissal of its officers, a County Council is no less independent of the central government than a Town Council; and, like a Town Council, a County Council is able to lay down rules of service by Standing Orders and Regulations which it passes by resolution. Every County Council is free to decide how many officers it will appoint, and how they shall be apportioned among the various branches of county administration. In short, the whole organisation of active service and the appointment of technical experts to each department are wholly and exclusively in the hands of the County Council and its committees. The system is therefore perfectly elastic, and the staff differs according to the local needs of the different counties. Nevertheless, since all County Councils have to perform a large number of duties in common, their organisation is substantially uniform—a uniformity which is furthered by the system of joint boards and committees as well as by a somewhat important voluntary

¹ The above account of the procedure is drawn from the Standing Orders of a great number of counties which exhibit such similarity that it has not seemed necessary to particularise. The Standing Orders and other regulations are to be found in the County Year-Book of each Council. It need hardly be added that County Councils, like Borough Councils, have full power to regulate their own organisation. In some counties a complete code of administrative procedure has been printed by order of the Council (cf. e.g. the Order Book of the County Council of Wiltshire).

² Cf. Local Government Act 1888, sec. 3 (10), and secs. 83, 84; and further, all Standing Orders under title of "appointment of officers." Many County Councils have also fixed the duties of their officers by a special series of resolutions (cf. *Year-Book of Lancashire*, pp. 102-109; *Wiltshire Order Book*, pp. 34-43).

association called the County Councils Association, on which all are represented. Further, there are a certain number of statutory officers whose appointment is required by law, namely, the Clerk of the Council, who corresponds to the Town Clerk of a borough, the County Treasurer, the Chief Accountant,¹ the Chief Constable, the County Surveyor, the Public Analyst, and the Inspectors of Weights and Measures. The Clerk of the Peace is both the chief official of the Court of Quarter Sessions and Keeper of the County Archives; and as he holds this double office, he is appointed by the Standing Joint-Committee and not by the County Council. His salary, however, is paid out of the county funds, into which, indeed, Court fees and fines generally flow. In all administrative business which has to be carried out by him, the Clerk of the Peace is subordinated solely to the County Council. Next to him stand the Clerks of the Justices, who act in the Petty Sessional divisions of the county jurisdiction, and have to look after the current business done by acting Justices in the Courts of Petty and Special Sessions. These Clerks of the Justices have no longer anything to do with administration proper; they are still appointed, as before, by the Justices of the Peace; only they are paid, like the Clerk of the Peace, by the County Council out of the county funds. Finally, the law makes special provision for the two important offices of Coroner and Medical Officer of Health.² The office of Coroner, whose duty it is to hold inquest in cases of suspicious death, has existed from the very beginnings of English law. For centuries it was elective, and so continued long after the offices of Sheriffs and Conservators of the Peace, and the other local repositories of public authority in Norman times had entirely lost that original elective character which they possessed in a few counties as a set-off to the power of the King. Indeed, the election of Coroner by the

The Coroner.

¹ If necessary. In fact, a chief accountant has only been appointed in a few counties under section 19 of the Local Government Act 1888, which runs as follows: "The Council shall from time to time appoint such other officers as have been usually appointed in the borough, or as the Council think necessary, and may at any time discontinue the appointment of any officer appearing to them not necessary to be reappointed."

² Local Government Act 1888, secs. 5, 17-19. The number of counties with medical officers is steadily increasing. Most counties are divided into "Coroner's districts," and a Coroner assigned to each.

freeholders of the county lasted undisturbed down to our own time. By section 5 of the Act of 1888, which provides that "after the appointed day a coroner for a county shall not be elected by the freeholders of the county . . . in pursuance of a writ *de coronatore eligendo*," a venerable institution of English law was placed on a new basis. From that time forward the writ for the election of a Coroner has been "directed to the county council of the county instead of to the sheriff," and the County Council thereupon appoints "a fit person, not being a county alderman or county councillor, to fill such office, and in the case of a county divided into Coroner's districts, assigns him a district." Any person so appointed "shall have like powers and duties, and be entitled to like remuneration, as if he had been elected coroner for the county by the freeholders thereof."¹

The appointment of a Medical Officer of Health by a County Council is not obligatory, for the reason that the administration of sanitary laws is assigned not to county councils but to district councils. But where the County Council exercises its power to make such an appointment, it may strike a bargain with any district council under the following provision:—

The county council and any district council may from time to time make and carry into effect arrangements for rendering the services of such officer or officers regularly available in the district of the district council, on such terms as to the contribution by the district council to the salary of the medical officer, or otherwise, as may be agreed, and the medical officer shall have within such district all the powers and duties of a medical officer appointed by a district council.²

And so long as such an arrangement remains in force, the obligations imposed upon district councils by the Public Health Act of 1875 to appoint a Medical Officer of Health is deemed to be satisfied. A candidate for the post of Medical Officer of Health must be qualified by law to practice medicine and surgery, and must be able to produce other qualifications.³

¹ Local Government Act, 1888, sec. 5. The Coroner's office is mainly judicial, but he has also the ministerial duty of executing process as the Sheriff's substitute where the Sheriff is suspected of partiality.

² Local Government Act 1888, sec. 17.

³ Cf. the Medical Act 1886, 49 and 50 Vict. c. 48, and Local Government Act 1888, sec. 18.

The duty of a Medical Officer of Health for the county is to inspect sanitary conditions in all the urban and rural districts of the county, to prepare an annual report, and to give expert advice to the County Council on all questions of public health.

To these, the principal officers of a County Council, must be added the assistant officers, servants, and workmen who complete the establishment. Their numbers and employments depend of course on the area of the county and the quality or intensity of its government. Owing, however, to the comparative uniformity of county government, the differences in county establishments are less marked than those of the towns. A striking characteristic of county establishments is the staff of teachers and lecturers for the Technical and Agricultural Schools or classes of the county. In many cases a Director or Organising Secretary is appointed, so that in his hands may be gathered together all the threads of secondary and higher education.

The appointment of officers follows on the recommendation of the Committees, the lesser employees being definitely appointed by the Committees, while the superior offices are only provisionally filled subject to the approval of the Council. By the Standing Orders of all counties a uniform system is prescribed for dealing with vacancies. All vacancies must be advertised by the Committee concerned in the newspapers, and applications invited. All applications, with testimonials attached, are to be open to the inspection of all members of the Council. The appointment itself is made by resolution of the Council; and there is a rule that when there are more than two candidates and the candidate with most votes has not a clear majority, the name of the candidate with fewest votes shall be struck out and a new vote taken. This method of procedure is continued until an absolute majority is obtained for one of the candidates. For the rest there is little in the organisation of the county service to distinguish it from its municipal prototype. In both there is a head official set over each branch of the executive and responsible to the Committee. The salaries of county officers correspond pretty closely with those which prevail in the larger towns. The larger

and richer the county, the larger, of course, are the salaries paid.¹

There is in the County, as in the Municipal Service, a strong demand for a general system of pensions, such as that which has already been established by law for the constables and officers of the police force under the Police Act of 1890. But as yet there exists no general power to grant pensions. On comparing the relations of county and municipal officers to their respective councils, we are at once struck by a difference which naturally results from the greater independence of the Committees and the looser structure of county administration. The staff of a county is placed in a fuller and less restricted sense under the govern-

¹ From the "Abstract of Accounts for 1899," published by the County Council of the West Riding of Yorkshire, we take the following list of the salaries paid to the staff. Allowance must be made for the fact that this is one of the largest and richest of the English counties:—

Clerk of the Peace and of the County Council	£1500
(and £264 for expenses).	
Deputy Clerk	700
(who also receives, in conjunction with his work for the various committees, a further sum of £740).	
Clerk to Asylums Committee	385
Chief Clerk	550
Twelve Clerks who form the staff of the Clerk of the Peace and of the County Council, from	85-350
Chief Constable	1000
Deputy	500
Twenty-three Superintendents of Police	160-250
Three Directors of the three Asylums, each	800
County Medical Officer of Health	800
Registrar of Deeds	500
Accountant	1000
Surveyor	1200
Deputy Surveyor	375
Twelve Coroners	150-400
Solicitor	1200
Clerk of Technical Instruction Committee	300
Chief Inspector of Weights and Measures	250
Analyst	250
Thirty-three Magistrates' Clerks with very various salaries, ranging from	30-900
(It should be remembered that these are all solicitors with private practices.)	

Altogether £54,291 : 9 : 2 is paid annually to the staff, and a further sum of £15,578 : 7 : 10 was paid by the West Riding for the same year (1899) as pensions to the police force under the Act of 1890.

ment of the Committees, and usually it has nothing to do with the County Council save through the medium of the Committee. The nature of the principal branches of business which are imposed upon County Councils—to be considered in detail in our next chapter—involves a further and important consequence. More work, except in the one department of education, can be performed directly by the County Committees without technical assistance than by the Committees of municipal boroughs whose numerous industrial enterprises can only be successfully managed by reliance upon highly trained and salaried experts. As a County Council is more of a supervisory and less of a directly administrative body than a Borough Council, it follows that the technical officials of the former are comparatively few, and are for the most part employed in the work of supervision rather than of direct management. For this reason a county staff is less classified and is also less bureaucratic than a municipal staff.

One consequence of this difference is that the Clerk of a County Council is a less important functionary than the Town Clerk, who has been described in a previous book.¹ Not that the Clerk of a County Council is a person of no weight. He is chief of the staff; he is the channel for all communications between the County Council, private persons, central departments, and local authorities. It is his duty to open all letters, etc., addressed to the Council, and to keep both the Council and its committees informed of all that is going on. He has to take care that all reports of committees to the Council are duly printed and sent along with the summonses to every county councillor. It is also his duty to attend either in person or by his representative all committee meetings, so that he may be said to have a general knowledge and supervision of the whole course of administration, although upon the administration itself he exerts as a rule but little influence. His main work is as legal adviser, as solicitor, and as head of the county staff; and he has plenty to do, for many complicated problems of law arise out of the manifold relations between a County Council and other local bodies. This was foreseen by the Legislature, and for that reason the office of Clerk of the Council was not only united with that of Clerk of the Peace

¹ Vol. i. p. 337 *sqq.*

of the County, but also the appointment to this double office was intrusted not to the County Council but to the Standing Joint-Committee. But a rapid increase of public business, at least in the larger and more populous counties, during the last decade, has added very much to the administrative side of the Clerk's work, so that the double office is overloaded, and the mode of appointment is regarded with dissatisfaction as a serious limitation of the Council's independence and as a slight upon its dignity.¹

To generalise from all these particulars is not easy. But certainly in its broad outlines county organisation presents a very similar picture to that which has already been drawn in our description of municipal boroughs. Here, as there, English Local Government has three principal organs—Council, Committee, the Official Staff, by the combined activity of which three purposes are attained—

First. All important questions of principle arising out of county government and all financial interests are settled and safeguarded by a democratic parliament representing the county.

Second. The whole government is carried on by a public authority which is composed of representatives directly elected by the inhabitants;² and thus the first requirement of the English constitution in its modern form is fulfilled.

Third. At the same time a guarantee of skilled and efficient administration is provided by the appointment of suitable officials and trained servants in subordination to the Committees. All that we have said previously upon the working of these three factors in Municipal Councils, upon the complete absence of the bureaucratic spirit, and upon the prevalence of business-like methods, is equally true of County Councils. Whoever follows the proceedings of County Councils, or reads the reports of their Committees, must be struck by the smoothness with which the duties imposed upon them by the Legislature are performed. They are not fond of litigation. Red tape is sparingly used.

¹ Cf. *County Council Times*, 14th July 1899, where the union of the two offices is criticised on several grounds, and mention made of two Bills unsuccessfully introduced into Parliament for their severance.

² Though this principle is subject to considerable dilution by the co-option of outsiders into committees.

Political feeling enters to some though not to a great extent into county elections; but once elected the representative body has little temptation to divide on political lines.¹ For many reasons the composition of a County Council depends to a less extent than that of a Borough Council upon party considerations.

Parties and
politics.

Owing to the expenditure of time and money which election involves contests are rather the exception than the rule. A man of public spirit and business capacity, especially if he happens also to be a landowner, has little difficulty in obtaining a seat on the County Council. Contests arise as a rule out of local and personal jealousies. Whether the fact that the whole body is elected triennially instead of a third annually serves as a sedative or as an incitement to party feeling it is impossible to say. If the latter, as an expert witness before the Royal Commission of 1894 would have us believe, elections would hardly ever have occurred at all if the municipal plan had been adopted.² Perhaps the chief reason why contests are so uncommon is that counties have so long been the stronghold of Conservative ideas. It is true that the defeats of the Liberal party in the elections of 1895 and 1901 were due to losses in the towns and especially in the large towns. But the County Councils even of predominantly Radical divisions are often Conservative in tone. There are exceptions, especially in the industrial districts of the North and in Wales, where there is a social and religious, as well as a political antithesis between the Nonconformist Liberals and the Conservative Anglicans. However, neither the work of County Councils nor the tradition of local government in England lends itself to parti-coloured administration.

¹ Cf. *Lecture on Devolution* delivered by H. Hobhouse, M.P. (1898), p. 11. Mr. Hobhouse, who has had great practical experience of local government, writes: "Some County and Town Councils may no doubt be swayed by political parties, but thanks to the common sense of Englishmen, municipal politics usually follow somewhat different lines to those of imperial politics."

² On the County Council Elections of 1898 the *County Council Times* remarked that one of the most noticeable features was the great number of electoral districts in which there was no contest. Norfolk was a striking example. The county is divided into fifty-six electoral divisions, in all of which there were only six contests. Almost all the chairmen of County Councils in England and Wales—fifty-four out of sixty-three—were re-elected in 1898 (*County Council Times*, Nos. 473 and 477 for 1898).

Especially strong in the counties is the doctrine, inherited from the old days of Whigs and Tories, that the struggle of conflicting ideas in national and imperial politics should not be imported into the field of local County Councils and aristocratic administration. Before the Reform Bill Whigs and Tories, who were almost always formally, and sometimes really, opposed on national questions, found common ground in local administration; for the local "self-government" of that period, which Gneist lauds to the skies, meant simply the absolute rule of landlords over the inhabitants of their district. It meant local government by the governing classes—that is to say, by the landed aristocracy who administered the laws which they themselves had made in Parliament. For tyranny gave itself constitutional airs. When it seemed desirable to act with special severity, Justices of the Peace were clever enough to wait until their brethren in Parliament had passed the economic or social measures required to legalise coercion. A system of "local self-government" so highly constitutional and so eminently legal was well adapted to secure the administrative co-operation of Whig and Tory squires. It was a system religiously worshipped by Burke, unscrupulously worked by Pitt, and scarcely criticised even by Fox. And at the present day, vast as is the change that has come over political conditions, a certain analogy has been preserved in the political relationship of local to imperial government. It is still difficult—nay, generally and for the most part impossible—to detect serious and permanent differences between Liberal and Conservative policy in regard to problems of local administration. Even now, at the beginning of the twentieth century, most of those who lead and move the Liberal as well as the Conservative party are drawn from the ranks of wealth, fashion, and society. There are still "governing classes,"—that is to say, a small section of the community which supplies the great majority of candidates for Parliament and the County Councils. It is true that the governing class of the year 1902 is not, like that of 1802, composed exclusively or even principally of landed gentry.¹ It is a propertied class but not a landed class. It is true

¹ Though it may be observed that more than half the members of Lord Salisbury's cabinet of twenty (formed in 1901) were landed proprietors.

also—and here is the really substantial point of difference—that the modern gentry of wealth or birth hold power and place not in defiance but by favour of the masses. A modern Ministry is not a garrison intrenched in an oligarchical constitution, but a garrison elected by the people and dependent on the goodwill of a Parliament elected by popular vote. The class which rules in the social and political life of modern England is therefore a propertied class, but not privileged. Wealth and education are almost essential, birth is useful, to a political career; but office and power cannot be enjoyed without the confidence of the people. Ministerial programmes, if not ministerial principles, must be adapted to the democratic taste. Hence party divisions must go right through the body politic. The people govern through the ruling classes instead of being merely governed by them. In County Councils especially is seen a personal link with the past; for the modern gentry, acting in a representative instead of a privileged capacity, still find plenty of common ground, especially in the management of county affairs. But as the conception of “gentry” extends so as to take in more and more of the middle classes, the competition for the favour of the masses has become more and more keen, and national policy as well as local administration more and more popular. The hegemony of the classes is therefore fast losing the characteristics of class rule, and whether parties occupy disputed or common ground, government is sought to be carried on more and more in the interests, or supposed interests, of the governed.

The above digression will serve its purpose if it has helped to make more intelligible the smooth and easy working of aristocratic administration in the English counties. So long as the making of laws and their execution continues in the hands of the same ruling classes, a conflict between the national legislature and the local executive is practically out of the question. Moreover, local administration is always under the control of Parliament, and is open to the breezes of public opinion, which blow upon it not only through the ballot box, but through the newspaper and the public meeting. In the ranks of the governing classes, enlarged and liberalised as they have been by the spread of wealth and education, sharp

conflicts of interest cannot easily arise, so that another motive for extending the party struggle into administration vanishes. The giant struggle between capital and labour scarcely touches local administration, at least in the counties. In one aspect it is a private war between employers and employed, waged with the weapons of lock-out and strike. In another it is a Parliamentary war, in which each party struggles for the enactment of new and the amendment of old laws in its own favour. But English administration, like justice, is simply the carrying out of the law, and consequently takes no part in this conflict—except, it may be, indirectly, when questions arise

Local adminis-
tration not a
party weapon.

as to the rate of wages to be paid by a local authority.¹ New laws altering the economic structure of society and the relations of employers to workmen are approved by one section of the governing classes and opposed by another. But the law once passed that particular battle generally ceases. If it continues it is a battle waged in Parliament and on the platform for repeal. It would be difficult to find an instance of any deliberate and general attempt by a party to prevent a law, which it had opposed, being administered. The ruling classes of society are too law abiding and too shrewd to use their administrative monopoly in central and county government for the purpose of paralysing Acts of Parliament. That alone would be a sufficient explanation of two centuries of gentry rule in England. Their long lease of power again and again renewed would not have been modified but terminated years ago, if the squires had tried to administer some other thing than the law. How the political and administrative problems created by the conflict of class interests have been solved in the towns, and how the hegemony of the propertied classes has been maintained and possibly even in some respects strengthened, was explained in the previous volume. In treating of the same problem in relation to County Councils we have to consider the conduct and behaviour of the ruling class. Does it use its power for class purposes, and if so, to

¹ Should a Council pay market rates or something more? Should it be "a model employer of labour"? But a County Council is not a large employer of labour, and is little tossed by the storms of socialistic feeling which rage periodically over urban authorities when large labour contracts are undertaken.

what extent? Does it or does it not fairly represent the general will of the county?

First of all, emphasis should again be laid upon the fact that County Council elections show even fewer signs than municipal elections of a class struggle—a circumstance the more remarkable because the society and economy of modern English life presents no sharper or deeper contrast than that between the landlord and the agricultural labourer. Now that the larger towns have been taken out of the counties as county boroughs, the chief economic interest represented on a County Council is agricultural, except in counties where mining and industrial undertakings are widely distributed. The representatives of agriculture are landlords and tenant farmers—though in Cornwall, the North Riding of Yorkshire, and one or two other counties, small freeholders are still fairly numerous—whose interests, conflicting in regard to rent, harmonise in regard to wages. Many landlords and farmers still imagine that they benefit by keeping down the agricultural labourer. It is impossible here even to glance at the peculiar and complicated character of the English land laws, which have been built up with the great estates upon the ruin of the peasant proprietor. The agricultural policy of County Councils. How that ruin was accomplished, how the leasehold system became all but universal, and how by enclosure of commons even the agricultural labourer was stripped of his economic assets, while the law of settlement deprived him of his liberty,—these are the headlines of a melancholy chapter in the history of English society. Deprived of all interest in the soil, without the vote, absolutely subject in every sense, economic, social, political, to the landlord who owned the land and the farmer who rented it, the English agricultural labourer was still, when the second half of the nineteenth century opened, in a most pitiable plight. His elevation had indeed already begun with the Poor Law Amendment Act. The year 1834 rescued his morals, 1846 gave him bread, 1884 gave him a vote, 1894 gave him a local council. But the helot is hardly yet aware of his emancipation, still less of the further measures which are required for his earthly salvation. So deeply rooted in social prejudice, so inter-twined in the baffling complexities of land laws, is the de-

pendence of the man who tills the soil of England, that he has hardly been able to employ a single weapon out of the whole armoury of formal democracy which has been hung up by Parliament in his cottage.

In spite of the ballot, an agricultural labourer is still very often afraid that if he makes an independent use of the franchise, he will be driven within eight days from his cottage.¹

Labourer,
farmer, and
landlord.

Nor can he take part in the government of his county; for he is prevented, by the want of pay, and even of out-of-pocket expenses, for his journey, from attending meetings and committees. Thus, in spite of a general, equal, and direct franchise, the whole body of agricultural labourers, as well as the lower middle classes, are practically excluded from sharing in the work of County Councils; and the hegemony of landed property previously guaranteed by law has been continued in fact. The result is that, in spite of a democratic constitution, the classes who had, until 1838, the privilege of managing county affairs, still continue to do so, a *de facto* monopoly of wealth and position being substituted for a constitutional privilege. The great landlords themselves, and the smaller gentry who have settled upon the land, with the assistance of large farmers, manufacturers, parsons, and professional men, are almost the sole candidates available for a County Council,—so fully have the wishes and hopes expressed by almost all politicians in Parliament during the discussion of the Bill of 1838 been realised. Men of the same propertied and agricultural class who previously, as Justices of the Peace, exerted judicial and administrative authority in the counties, are now county councillors or aldermen.² The analysis of three County Councils which will

¹ The reports of the English Land Restoration League (whose principal object is to tax the land values) contain many examples to show that the democratisation of local government has been almost worthless to the peasant in consequence of his utter helplessness in the presence of the landlord. A very startling case in the Report of 1896 is taken from a parish on the estate of the Duke of Beaufort. On the election at a vestry meeting to the office of churchwarden of Admiral Close, a person distasteful to the duke, the latter promptly gave all his tenants in the parish notice to quit their farms. See "With the Red Vans in 1896," p. 19 n.

² The conclusions above stated are derived from an analysis of lists of county councillors. The following results are drawn from the Year-Books of 1899 of the County Councils of Leicestershire, Notts, and Derbyshire:—(1) The County Council of Leicestershire comprised 11 private gentlemen and

be found at the foot of this page shows that practically no agricultural labourer or working-man finds his way into those bodies. The exceptions prove the rule. Thus at a rural conference held under the auspices of the Liberal party in London in 1891, one of the delegates is reported to have said—

I am one of the working classes, and I have been returned by my friends and neighbours upon the County Council. But, gentlemen, being a poor man, and the meetings being held in the county town of Gloucester, I find it very hard to attend those meetings, and if local government is to be of any real service to the working classes, we must have parish councils.

Under the title "Government by Horse and Trap," it has been pointed out¹ that even in county divisions which return Radicals to Parliament only the local gentry and men of wealth sit on the County Council, the explanation being that expenses are not paid, that the journey to the county town is usually from ten to twenty, often as much as forty or fifty miles, and that the office therefore really involves the possession of a good income and often of a horse and trap.

But it must not be supposed that, if these difficulties in the way of working-men were removed, they would be elected in large numbers to County Councils. Unsatisfactory and anomalous as the appointment of Quarter Sessions undoubtedly was, it is equally certain that the Justices of the Peace performed their duties with integrity and efficiency, and

esquires, 13 farmers, 4 retired officers, 1 peer, 1 Anglican clergyman, 1 Roman Catholic priest, and 1 Congregational minister, 2 architects and engineers, 6 manufacturers, 1 corn-dealer, 6 land agents, 1 mine-owner, 1 director of mines, and 1 keeper of an asylum. Among the aldermen were 6 farmers, 3 baronets, 6 private gentlemen, 1 mine-owner, 1 clergyman, and 2 manufacturers. Leicestershire is a grazing county, with an important mining industry. (2) On the Notts County Council sat 23 merchants, manufacturers, and directors of mines and other undertakings, 5 solicitors and land agents, 2 engineers and builders, 16 private gentlemen, 4 farmers, 2 peers, 1 privy councillor, 1 barrister-at-law, and a retired officer. The composition of the Council represents the strongly industrial character of the county. (3) Among the Derbyshire County Councillors were 13 private gentlemen, 20 merchants, manufacturers, 1 mine-owner, 3 engineers, 2 school managers, 2 barristers, 1 peer, 1 parson, 1 retired officer, 1 doctor, 1 butcher, 1 printer, 1 bookseller, 1 local officer, 1 solicitor, 1 banker, 2 grocers and provision dealers, 1 farmer, and 1 land agent. The Aldermanic Bench comprised 2 peers, 2 baronets, 11 private gentlemen and J.P.'s, 1 carriage-builder, 3 manufacturers, and 1 architect.

¹ *The Progressive Review*, May 1897.

inspired such confidence that the inhabitants as a rule have been willing enough to leave the work in very much the same hands as before. The new democratic bodies were expected to do the old work in the old way rather than to solve agrarian problems. That public opinion neither wants nor expects any heroics from County Councils is proved by the conspicuous absence from these bodies of the land reformers and land restorers who are to be found in Parliament. At the same time, the County Councils have done a good deal for the general interests of agriculture by enforcing the veterinary laws and the laws against adulteration, by reducing the pollution of streams, and by making scientific agriculture a branch of technical education. In all this they have acted from the standpoint of the enterprising capitalist who has invested in land. They have shown no desire to stimulate social and political activity,¹ they have done little to raise the landless labourer, and have seldom followed the example set by the municipalities as model employers.

In this respect the new organisation remains true to the political conservatism of the old—a representative of the landlord and the farmer. At the same time much useful work has been done by the new parliaments of the county. What was good in the old Quarter Sessions administration,—strict observance of law, abstention from political partisanship, and freedom from corruption,—is no less characteristic of the new body; but in addition, as already observed, the County Councils have devoted themselves with discriminating zeal to important and useful public work which had previously been almost or altogether neglected. Special courses of instruction

¹ It is more particularly in the purely agrarian counties that the traditional "class character" of county administration is maintained. The County Council of Essex, for example, in October 1893 drew up bye-laws with a view to putting down an agitation carried on by Land Reformers who addressed the agricultural labourers from vans. The bye-laws provided that such waggons should not be drawn up on any common or unenclosed waste of any manor, and were to be dealt with by the police like the vehicles of wandering gypsies. But thanks to the energetic protests of the Land Restoration League, this attempt was frustrated. The League lodged a protest against these "bye-laws for the good government of the county" with the Home Secretary, and memorialised the Privy Council in favour of their disallowance. The objections of the League were upheld and the proposed bye-laws amended (see Special Reports of the League, entitled, "Among the Agricultural Labourers with Red Vans," 1893, p. 8; 1895, pp. 15-17).

in agriculture are being established, local light railways are promoted, butter-making and cheese-making are encouraged, country roads are improved, and in many other ways the activity of County Councils has added to the amenities of rural life and the opportunities of industry. The advantages of the new over the old system are accounted for not by a change of *personnel*, but by a change of spirit. The country gentlemen who form the Councils are conscious of being the elected representatives of the inhabitants; the country gentlemen who formed the Quarter Sessions knew that they were appointed by the Crown and could not be deposed by the people.

The reform of organisation, therefore, though it has not given the mastery to labourers, or given them any direct share in the government, has nevertheless contributed a more lively and democratic tone to county administration, has opened the eyes of the Conservative gentry, and superimposed a spirit of progress upon the traditional honesty and thrift of the old patriarchal style of administration. Thus the democratic reform has had an educative and liberalising influence upon the ruling classes in the counties.

The conservatism of County Councils, as of other public bodies in England, has its merits as well as its disadvantages; for there are always traditions and institutions in England which deserve to be preserved, because their heart is sound, though their form may show symptoms of decay. Hence reforms in England are again and again seen to be rather restorations and revivals of existing institutions than new erections built up on the ruins of the old in accordance with new plans. Had the political institutions inherited by the age of reform in England been not only defective but rotten from top to bottom, the whole polity must have been reconstructed. As it was, reform took the place of revolution, and conservatism—the political instinct which defends all the historical elements remaining in the constitution—has proved one of the indispensable conditions of healthy and permanent political progress. For progress and reform at their best require a strong national tradition, a strong sense of the value of history, firm conceptions of law and custom and of all the priceless monuments inherited from the past. No

better illustration of the worth of the conservative element in reforms could be found than in the development of county government as we have described it. But in enlarging upon the health and strength which tradition lends to the process of regeneration we must not forget that the success of good laws depends after all upon the men who look after the machinery. The controlling class in the counties has for centuries enjoyed a position of superiority and privilege; but its vigour has been constantly renewed from men who have risen by commercial success and intellectual ability. Hence it has generally represented in essentials the ruling ideas of the nation; and if it has sometimes been strongly influenced by the prejudices and interests of class, it has at least preserved its independence of the throne and the bureaucracy. Under new and better conditions it is proving its ability to govern as the representative of the will of the people, with a clearer perception of the needs of the nation and a greater readiness to work for the general good than ever before. Little wonder then that at this early stage of their existence County Councils are already rooted firmly in popular esteem, and are recognised as a permanent element in the constitution.

How far the present County Council, outwardly democratic, inwardly aristocratic, is likely to be transformed into a genuinely democratic local parliament cannot as yet be foretold. This much only is certain, that such a transformation can only be brought about as the result of a profound and comprehensive change in the distribution of landed property in England. How is the dangerous antithesis between the landlord and his landless labourer to be removed? The problem is no mere abstraction, but of the highest practical importance: it was the legacy left by the free trade school to succeeding generations; and the task of providing a radical reform of the land laws is one of the greatest which now confront English democracy. The migration from country to town, rising wages and falling rents, the increasing dissatisfaction of tenant farmers and hired labourers with the law, conditions, and customs of tenure and employment, indicate the imminent approach of a crisis. That crisis cannot be dealt with by County Councils. The remedy, whether a temporary palliative or a permanent cure, must

Probable future
of County
Councils.

be found by Parliament. But if and when the legislative cure is complete, County Councils, as the head and centre of agricultural administration, will not be able to preserve their present character. When once the feudal law of real property is broken down, the "latifundia" dissolved, the principle of "free trade in land" established, and the people reinstated on the soil, County Councils must inevitably grow into purely democratic bodies. Till then, however,—and there is no sign that the goal will soon be reached,—County Councils, in spite of their democratic form, will continue to give faithful expression to that conservative opportunism which has for so many decades characterised the public life of England.

CHAPTER III

THE COUNTY COUNCIL'S SPHERE OF ACTIVITY

A. In General¹—Administration defined

THE reform of 1888 is usually summarised as a transference of the work of county government from the Justices of the Peace to representative bodies, democratically elected by the inhabitants of the county, and called the County Councils. The distinction between Justice and Administration, between "ministerial"² and judicial functions has long been familiar to English law. But "ministerial" is not "administrative"; and the full and precise meaning of a transference of administrative powers is not easy to understand or to explain. The conception of administration as a function of the public authority absolutely separate from justice was foreign to the English law of local government until the year 1835, and, so far as counties are concerned, until 1888. What then does the separation of justice from administration mean, and what are the powers comprised under the latter head? Turning to the Act of 1888, we read in section 3: "There shall be transferred to the council of each county on and after the appointed day the administrative business of the justices of the county in quarter sessions assembled,—that is to say, all business

¹ Cf. Gneist, *Self-Government*, Part VII., pars. 61-69, 72, 73; Maitland, *Justice and Police*, London, 1835.

² "Ministerial" properly applies to the non-discretionary acts of a judicial authority. The line is hard to draw. Thus, backing a warrant is ministerial, admitting to bail judicial. If a Justice can be compelled by mandamus to do an act, that act is ministerial. If Justices do wrong judicially they will only be ordered by mandamus to hear and determine. Cf. Scholefield and Hill, *Appeals from Justices*, p. 183.

done by the quarter sessions or any committee appointed by the quarter sessions." And thereupon follows a list of the particular powers transferred to the County Council. Next, the law declares certain powers exercised by the Justices *out of sessions*, to be also transferred to the County Council. Finally, in section 78, the law provides that the transfer of powers and duties effected by the Act "shall not authorise any county council, or any committee or member thereof, (a) to exercise any of the powers of a court of record, (b) to administer an oath, (c) to exercise any jurisdiction under the Summary Jurisdiction Acts, or perform any judicial business, or otherwise act as justices or a justice of the peace."¹ The above quotations from the Act are at least sufficient to show one thing very plainly—that an effective antithesis is set up between the judicial and the administrative business performed by the County Bench up to 1888. Jurisdiction and administration are two conceptions sharply distinguished from one another by the County Councils Act, which leaves jurisdiction with one authority and hands over administration to another. The principle which has thus received external form and constitutional approbation is, that the administrator must not be confounded with the judge. Each is a public authority exercising a distinct function. "Administrative business" may therefore be defined as non-judicial work performed by a public authority, and involving the execution of particular powers and duties set out in Acts of Parliament. But this does not take us very far; we also want to know whether these functions, classed by the law as administrative, have anything in common; and to that end it is necessary, first of all, to make clear how the subject stood before the reform of 1888. We start with the idea of jurisdiction, for that is the known historical conception from which the Legislature itself proceeded in order to define its opposite—the unknown category of administration. Jurisdiction is often used for the sphere or province of any authority. But originally, jurisdiction meant the declaration of the law. *Jus dicere* means to interpret the law. Applying this to our present subject-matter, we may say that all the work of the

¹ But this is "without prejudice to the position of the Chairman of the County Council as Justice of the Peace during his term of office."

Justice of the Peace is now, in consequence of the Act of 1888, the work of interpreting the law.¹

It was, indeed, as a judicial person that the Justice was originally instituted; but, as we have already seen in a historical chapter, the duties of a police magistrate with summary and criminal jurisdiction were gradually enlarged by statute after statute, which devolved upon Justices of the Peace, either as individuals or as colleagues in sessions, certain

How Justices
came to
administer
under judicial
forms.

functions of government. They were entrusted with the task of safeguarding the rights and enforcing the obligations conferred and imposed by Parliament upon all citizens. And it was in consequence of this choice of a judicial person as an intermediary between the State and its citizens, that provincial administration, which has been conducted in continental States without regard to law, by the absolute decrees of a prince and his council, was built up by the English Parliament on the ground of the common law, and has been from the first an essential ingredient in the statutory laws of the land. Thus it came to pass that English administration not only grew up under the shadow of law, but flourished for centuries as a function of the Justice, and even assumed judicial forms. Outwardly no constitutional difference was for some time apparent between the administrative and judicial acts of a Justice of the Peace. Nor need this occasion much surprise; for a judge invested with administrative powers is naturally inclined to execute those powers with all the form and appearance of judicial procedure. He was applying a familiar form to a new content. It was, then, but natural that Justices in executing the provisions of a law should at first have tried to act as though they were deciding a disputed point of law. But as their administrative activity extended it became necessary in practice to distinguish the new work from the old, and

¹ Cf. Bacon's *Essay LVI. of Judicature*. It is true that a Justice of the Peace still has certain ministerial as well as judicial functions, such as allowing poor rates, backing warrants. These are ministerial functions which flow from his judicial functions, and are therefore properly performed by a Justice; but, on the other hand, many administrative acts are disguised in a purely judicial form, such as licensing, proceedings against nuisances, etc. Maitland, *Justice and Police*, p. 84. A good example of the old fashion of confounding things administrative with things judicial may be found in the terms of the oath still administered to Grand Jurymen.

to develop a less conventional procedure in place of the genuinely judicial procedure which properly belonged to judicial acts. Hence arose the division of a Justice's work into criminal and civil jurisdiction. The Justice's work of prevention and police was done in the quasi-judicial form of orders and warrants. Nor did this appear strange to the popular mind, which readily sees that it is not always necessary to wait and punish a trespass or illegal act. Prevention is better than cure, and seems to be a sort of anticipatory justice. From the standpoint of police the object of the preventive order and of the sentence of punishment is the same, and it seemed proper that in actual practice these two functions of authority should be entrusted to the same hands, and executed in similar forms. This epoch in the development of English local government may be characterised as the period in which preventive measures of police were carried out under judicial or quasi-judicial forms. The activity of the judge was extended from crimes and punishments to those other functions which are conveniently treated under the term civil jurisdiction—a conception gradually filled in by the growth of positive laws for municipal ends. Within this province of civil jurisdiction other subdivisions were developed, according as the civil functions were performed by one Justice, or more than one, or by the whole bench of County Justices acting together in Quarter Sessions. Thus arose the important distinction between jurisdiction "out of sessions" and jurisdiction "in Quarter Sessions." Lastly, in the jurisdiction of Justices "out of sessions," another series of distinctions has been made at haphazard, or at least on no scientific principle in a multitude of statutes, between different classes of work, some of which have been made to require the presence of more Justices than others. For some purposes one Justice was thought to be enough. For others at least two Justices were required¹—two being necessary at common law to constitute a Court of Record; for others more than two Justices, for others again all the Justices of the petty sessional division.

Important, however, as these legal distinctions are in

¹ It may be observed that where two Justices are required for a judicial act, they must act together, whereas if the act is ministerial they may act separately.

practice, it is still more important to understand a real division in what we have termed the civil jurisdiction of Justices. One half consists of police orders and other orders of a preventive character, such as regulations or bye-laws for the carrying out of public statutes. The work is done either by making, in pursuance of Acts of Parliament, general rules or orders, binding upon all persons within the jurisdiction, or by issuing individual orders required for the execution of a law, such as an order for the removal of a particular nuisance. These orders are rather ministerial than judicial. The second kind of civil jurisdiction was exercised by the Justices where there was a conflict of interests produced by the carrying of laws into execution. Thus, in executing the laws for the relief of the poor, the laws with regard to vagabonds, the law of settlement, and laws regulating trade and labour, the Justices had to decide between individuals, or between individuals and local authorities. Here we have what may be called civil activity in the strict sense—that is to say, the interpretation of the laws of administration. This function of Justices is discretionary and judicial, and yet is sharply separated from the police or criminal jurisdiction of penalties and punishments. It is closely analogous, but superior to the function of issuing orders and regulations; for by virtue of it alone can those orders and regulations be enforced.¹ To sum up: The broader conception of civil jurisdiction comprises, first, the general power of issuing rules, orders, and regulations, for enforcing locally the will of the Legislature; and second, the decision of points of law arising in disputes which are not concerned with crime, and not within the competence of the High Court.

In these two fundamental divisions is comprised the whole civil jurisdiction exercised by the Justices in Petty and Quarter Sessions. The civil jurisdiction of Quarter Sessions was of a comparatively late growth, though Thomas Smith, writing early in the seventeenth century, observes that at the quarterly meetings of Justices general county business was transacted as well as

Late growth of
civil jurisdiction
of Justices.

¹ This part of the civil jurisdiction of Justices is usually called "quasi-criminal" in the text-books—an unfortunate but inevitable consequence of its development.

the regular judicial work of the Court.¹ But it was not until after the Restoration that Quarter Sessions really began to rule the whole constitutional life of the county, and the development was not complete before the end of the eighteenth century. The most important step in the process—a consequence of the decay of feudalism—was the subordination of parish government to Quarter Sessions, whereby Quarter Sessions became the superior and controlling authority over the smallest units of local government within the county. Further, by a number of statutes, which need not be named, Quarter Sessions became a Court of Appeal against the orders of Justices, and also against the assessments made by them at Petty Sessions. Thereby—without including the purely criminal jurisdiction of the Justices, which indeed we are here leaving entirely out of consideration—the county authority obtained a fresh accession of civil work and dignity. Since the beginning of the nineteenth century the intervention of Parliamentary legislation in spheres of interest previously untouched has grown constantly, and both the individual and the local authority have been taught the meaning of administration in the modern sense, and the boundaries which divided it from justice and police. Almost all those laws which may be ~~called~~ administrative in the ^{Modern laws of} technical sense, because they impose adminis-
trative functions partly obligatory, partly permissive, upon local authorities, are comparatively modern. Their effect necessarily was to enlarge the area of quarter-sessional work, because the Justices of the Peace in the counties were the only available organ provided by the constitution for the execution of such laws. But the more this business of Quarter Sessions grew, the more difficult and inconvenient it was to preserve judicial forms. And so there sprang up side by side with the old civil jurisdiction of Quarter Sessions a second department of purely administrative activity, which dropped the formularies of justice and became known as “county business” or county administration. “County business” was transacted by the Justices in a double capacity—as officers appointed by the Crown and as representatives

¹ Cf. Thomas Smith, *De republica et administratione Anglorum, libri tres* 1625, p. cxvii; further, Lambard, *Eirenarcha*, 1592, iv. chap. xix.

of the county. As representative of the county the Bench was a local association with powers and duties conferred upon it by statute. As representative of the Crown it was a judicial court. Of the multiplicity of county business in the middle of the nineteenth century a good survey is afforded by Gneist.¹ County business at that time included the whole management of county property, the building and maintenance of county institutions, and of county courts, county jails, county asylums, county bridges, etc.; as well as the making of a county rate calculated to cover the necessary expenditure of the year. In addition there was the half-administrative half-judicial duty of granting and renewing licenses in the county. Such was the county business, from which, except as regards licensing, judicial forms and proceedings were excluded.² And so there was developed by force of circumstances and without the intervention of Parliament a new system for the transaction of business of a purely administrative character in a fashion analogous to the municipal modes of handling public work.

Just as Town Councils, after the reform of 1835, looked after the interests and needs of the town, so did the County Justices, though summoned by the Crown, act as representatives of the common interests and needs of the county, by means of committees freely formed out of their number, whose resolutions and administrative proceedings were approved by the whole body of Justices sitting in Quarter Sessions. Thus the great difference between the reformed municipal government and the unreformed county government lay not in organisation but in constitution. Like the towns the county had its committees; unlike the Town Councils, however, the administrative authority of the county was not elected by vote of the ratepayers, and was therefore neither representative of nor responsible to those whom it governed. The two main branches of the civil jurisdiction of Justices are now plain. The first rested mainly upon common law and the older legislation, and was manifested in the carrying out of police business in the widest sense, the boundary between the police

¹ Gneist, *Self-Government*, p. 372 *sqq.*

² Licensing is still half-way between the jurisdiction of a court and the business of a local authority.

administration and police justice having practically disappeared by a natural fusion. The second branch consists mainly of the modern work of administration in the strict sense of the word—that is to say, the management of the general interests of the local community and of the nation in pursuance of general and local Acts of Parliament. This second branch of work was based mainly on the legislation of the nineteenth century, and was carried on by the Justices without those judicial formalities which were, as we have seen, required for the first branch of civil jurisdiction.

A third element remains to be considered, namely, the element of law which limited the discretionary powers possessed by Justices of the Peace in relation to county business. Here we are met by the very problem ^{The limitation of administrative powers in England.} for the solution of which the Continent has established administrative courts. In England a different method was dictated by circumstances; for functions which, on the Continent, had been distinguished as administrative and separated from the province of civil and criminal law, had in England been intrusted to judicial functionaries. The administrative powers exercised by these functionaries had never in England been anything but the execution of laws, whereas continental absolutism had devised for the whole province of administration a system which was but slowly and very imperfectly legalised by a process quite foreign to the history of English law. That process may be said to have been begun and completed in the nineteenth century; and the result is that the Continent has administrative laws distinct from the ordinary laws of the land. Continental administration is subject to a peculiar jurisdiction, and the powers of the continental administrator are governed and limited by legal principles different from those which apply to private life. In England, however, every administrative function as it was created was usually attached to the judicial office of Justice of the Peace, and however much the activities of government multiplied and intensified, they could never grow outside the framework of the ordinary laws. The execution of the laws of administration by the Justices was always a legal function, and there was no other criterion of its validity than its correspondence with law. The prime securities for a

purely legal administration unqualified by arbitrary discretion lay at first in the judicial character of the organs of administration, and in the peculiar activity of Parliamentary legislation, which never wearied of elaborating rules and procedure for every requirement of government and every administrative emergency.

As there was nothing in the form, nature, or source of English laws of administration to distinguish them from other laws, so there was no difference in the courts to which, in cases of difficulty, they were referred. The laws and rules of administration are interpreted in England by the ordinary tribunals, and there is no distinction or difference between private and public case-law. The High Courts have been the guardians and interpreters of the law of administration ever since the national system of law attained its final and secure form in the seventeenth century; and they are so simply because they are the guardians of the whole law of the land. Illegal proceedings of a public body or officer are reviewed by the same courts with the same authority as those of a private individual. Since the Revolution there has never been even a theoretical possibility of the idea of a special administrative law being domesticated in England, much less of administrative tribunals

No administrative law in England.

being created. The unity of the national idea of law, its embodiment in the supremacy of the central courts over the common life of the nation, and the overthrow of all attempts to win validity for royal proclamations have made it impossible for administration in the continental sense to grow up in England. The full practical meaning of this fundamental principle of the English constitution only appears when we see how utterly it abjures the doctrine, so dear to continental jurists, of "subjective public rights." It has always been a maxim of the English constitution that every citizen has a "subjective" or inherent right to uphold the law, a right arising not from any special law, but being an essential element in the very notion of law.¹ Nay more, every citizen has a "subjective" right of action to maintain a lawful order and to remove an unlawful order—supposing such orders to affect him—whether the point of dispute belongs to

¹ A law not enforceable by the subject but only by the Crown must be so in consequence of express statutory provision.

what a continental jurist calls private law or to what he calls administrative law, and whether the complaint arises from the action of an individual citizen or from that of a duly constituted public authority. In the eyes therefore of the English law the maintenance of every statute and of every objective rule of law is a legally protected interest of every citizen; and every violation of it gives the injured person, however slightly he may be affected, the subjective right to bring an action before the ordinary courts for the purpose of restoring lawful conditions. In brief, England has always had a popular right of complaint *actio popularis* in the sense of the old Roman law—the right, that is to say, to legal protection against the government throughout the whole province of administration. This right of the individual citizen is the indispensable corollary to that other fundamental principle of the English constitution, that every act of the government must be an act of law,—the supreme principle, which Dicey calls the rule or predominance of the law.¹

Thus the whole government of the Justices was subordinated to the permanent and unbroken control of the ordinary courts of the land. According to the common law, cases arising out of the administration are always to be tried and decided by the ordinary rules and procedure. Thus, a Justice of the Peace, or a number of Justices in Petty Sessions, or the whole body of County Justices in Quarter Sessions, are so many inferior Courts whose decisions upon constitutional and administrative questions are subject to the revision of the High Courts of Justice.²

Returning now to the County Councils Act of 1888, it is

¹ On the relation between law and administration much light is thrown in Dicey's brilliant work *The Law of the Constitution*, 3rd edition, 1899, pp. 172-388, particularly in the chapter entitled "The Rule of Law: *Droit Administratif*," which provides jurists, whose minds are obsessed by continental ideas, with material for obtaining a clear knowledge of the English theory of law in administration. Dicey impressively shows that the full and unfettered sovereignty of the law and of the ordinary Courts over the administration has been an essential attribute of the "modern" English State since the Revolution. Yet the conception had its roots in common law; and from the common law it is that the leaders in the early campaigns against absolutism, the learned judges and lawyers in the seventeenth century, drew freely as from an inexhaustible well of civic freedom.

² By way of special case, or by certiorari, mandamus, prohibition, etc.

possible to estimate the true meaning and value of the reform which it brought about. In that reform, as we pointed out, a distinction is made between administrative business and jurisdiction—between government and justice. The first is transferred from the magistrates to a new, and representative, and administrative body. This reform makes not the slightest alteration in the constitutional principles of English government which we have briefly outlined. As before, the interpretation of law remains in the hands of Justices appointed by the Crown and of the High Courts, and appellate tribunals reorganised in the nineteenth century. As before, England remains free from those tribunals which have been established on the Continent for solely administrative purposes. Individuals injured by acts of administration still look for the redress of their grievances to the ordinary courts and the ordinary procedure. All this is unaltered. What then is this administration that has been handed over to the County Council? We have already traced out the two main branches

County business, of civil work performed by the Justices, the so-called county business executed without judicial forms, but including licensing; and, secondly, the civil jurisdiction proper. With regard to the second, we distinguish between the decision of points of dispute arising out of the laws of administration, and those magisterial functions in virtue of which general regulations or particular orders are issued for the purpose of carrying out those laws. Now the Act of 1888 has made changes in both these departments of administration. County business,—that is to say, the management of county affairs in the narrow sense,—has been handed over *en bloc* to the new elective councils. That half of the civil jurisdiction which decides disputes arising out of the laws of administration has been left, as before, to the County Bench. The important function of licensing public-houses has been retained by the Justices, on the questionable ground that it is in part judicial work. That part of the civil jurisdiction which is concerned with police has been divided. Police orders and prohibitions are still issued by the Justices, as punishments for offences against them are still inflicted by the Justices. But this control of police law by the Justices has been in practice almost nullified by the organisation of a county police

under the influence of the Secretary of State. Since the middle of the nineteenth century the management of the police had been in the hands of a special committee of the Quarter Sessions and of a chief constable ^{Control of police.} appointed by them, both committee and constable being under the control of the central authority, similar to that which had been established in the case of the municipal police. This concentration of police government in the Quarter Sessions has ceased; but the County Council has not been entrusted with entire control. The county police has been placed under a special organ called the Standing Joint-Committee, composed of the County Council and Quarter Sessions, and this Joint-Committee has power to issue preventive orders and regulations (or bye-laws) of a general character in relation to the police work proper. But such general orders as have nothing to do with the proper work of the police—the detection, prevention, and punishment of crime—are now issued, by the County Council exclusively. Such is broadly the result of the transference effected by the Act of 1888. It is not quite correct to speak of the severance of justice from administration. To be exact, the carrying out of the laws of administration has been completely severed from the judicial form and the judicial office in the county, but without in the least diminishing the legal character of administration. The new County Government, like the old, is government according to the law, and the law of every executive act is controlled by the ordinary courts. Nor has the reform in the least altered the adjudication of controversial points of administrative law. There is no such thing in England as an administrative court—on the contrary, since the ^{The modern form of county administration.} reform of 1888, the legal character and authority of the magisterial and superior tribunals in all matters of civil jurisdiction has been intensified. The great importance of the reform lies therefore not in any change in the law of administration, but in the erection of a new and independent organ of county government, better suited by its political structure to deal with modern problems. These problems had long outgrown the old forms and grooves of magisterial and police administration; so much had already been recognised in developing the Quarter Sessions into a body capable of manag-

ing county business in municipal fashion. But the larger the tasks of administration laid upon the Justices, the more marked was the incongruity between the old conception of county business as an indispensable minimum and the growth of positive and purposeful administration, and the more perceptible was the contrast between the political ideas of the old administration and the modern tasks with which it had been invested. In fine it had become clear that it was not only difficult but impossible to maintain existing conditions. In the meantime there had also been formed an intermediate province of administration, in consequence of sanitary legislation; and this province, though localised in county districts, was not only under the control of a central department, but was completely divorced from county business, being managed by local sanitary authorities. At the same time, for want of a representative body in the county, Parliament was overburdened with local business, of much of which it might well have been relieved by a well-considered devolution to large representative authorities. Thus everything pointed and pressed towards a reconstruction of counties as provincial parliaments. No wonder then that, with all these different causes and motives at work, so little opposition was finally offered to the creation of County Councils. In proceeding to describe in detail the sphere of a County Council's activity we shall follow the divisions already laid down. First, the administration transferred from the Justices; secondly, the new work imposed on the county authority for the first time in 1888 and the following years; thirdly, the promotion of County Councils to the rank of intermediate bodies for the purpose of relieving the central administration of some of its duties.

*B. The Administrative Functions of County Councils considered in detail*¹

1. The so-called "county business," transferred by the Act of 1888 from Quarter Sessions to County Councils, is classified as follows:—

¹ See sections 3-17 of the Local Government Act of 1888. The alterations and additions made by ten years of subsequent legislation to the work of County Councils will be found in Macmorran and Dill's edition of the Act 1888, Part III. (1898).

1. *Finance*—

- (a) The making, assessing, and levying of county, police, hundred, and all rates, and the application and expenditure thereof, and the making of orders for the payment of sums payable out of any such rate or out of the county stock or county fund, and the preparation and revision of the basis or standard for the county rate.
- (b) The borrowing of money.
- (c) The passing of the accounts of and the discharge of the county treasurer.

Indeed the whole financial administration of the county is placed in the hands of the County Council. We shall deal with the subject at length in a later chapter.

2. *Management of Property*—

Shire halls, county halls, assize courts, judges' lodgings, lock-up houses, court-houses, justices' rooms, police stations, and county buildings, works, and property.¹

3. *Licensing*—

The licensing under any general Act of houses and other places for music or for dancing, and the granting of licenses under the Racecourses Licensing Act, 1879;²

4. *Asylums and Schools*—

- (a) The provision, enlargement, maintenance, management, and visitation of asylums for pauper lunatics;³

¹ The statute under which shire and county halls, assize courts, and judge's lodgings are built and maintained is 7 Geo. IV. c. 63, secs. 3, 4, 5, 9, 15. Borrowing powers for the purpose are conferred by secs. 10, 11, 12. See also 7 Will. IV. and 1 Vict. c. 24, secs. 1, 2, 3, ; and 10 and 11 Vict. c. 28, sec. 1. As to the purchase of houses or buildings for judges' lodgings see 2 and 3 Vict. c. 69, sec. 1. For the provision of lock-up houses, and of a superintending constable, see 5 and 6 Vict. c. 109, sec. 22, and the Public Works Loans Act 1875, sec. 40 (38 and 39 Vict. c. 58). As regards court-houses for petty sessions see also 12 and 13 Vict. c. 18, secs. 2 and 3; 42 and 43 Vict. c. 49, sec. 30; 47 and 48 Vict. c. 43, sec. 8. The Acts providing for police stations are 3 and 4 Vict. c. 88, sec. 12; 19 and 20 Vict. c. 69, sec. 24; while borrowing powers for the purpose are conferred by 3 and 4 Vict. c. 88, sec. 13, and the Public Works Loans Act 1875, sec. 40.

² 42 and 43 Vict. c. 18. Another Act administered under this section is the Disorderly Houses Act, 25 Geo. II. c. 36. These functions of the County Council are treated as "quasi-judicial" in English jurisprudence.

³ Legislation on this subject was consolidated by the Lunacy Act of 1890 (53 and 54 Vict. c. 5), which again was in some points amended in 1891 by 54 and 55 Vict. c. 65. The establishment, management, and regulation of lunatic asylums, which thus fall on County Councils and County Borough Councils (see sec. 32 of the Act of 1888), are, however, sharply separated from the administration of what we may call the lunacy laws proper, which still devolves on the Justices of the Peace in Petty and Quarter Sessions. Orders for con-

- (b) The establishment and maintenance of, and the contribution to, reformatory and industrial schools.¹

5. *Bridges*—

Bridges and roads repairable with bridges, and any powers vested by the Highways and Locomotives (Amendment) Act, 1878, in the county authority.²

6. The regulation of fees to be taken by, and the costs to be allowed to, any inspector, analyst, or person holding any office in the county other than the Clerk of the Peace and the Clerks of the Justices.
7. The appointment, removal, and determination of salaries, of the county treasurer, the county surveyor, the public analysts, any officer under the Explosives Act 1875, and any officers whose remuneration is paid out of the county rate, other than the Clerk of the Peace and the Clerks of the Justices.
8. The salary of any coroner whose salary is payable out of the county rate, the fees, allowances, and disbursements allowed to be paid by any such coroner, and the division of the county into coroners' districts, and their assignment.

9. *Elections*³—

The division of the county into polling districts for the purposes of Parliamentary elections, the appointment of places of election, and of the places for holding courts for the revision of the lists of voters, and other duties with regard to the registration of Parliamentary voters.

10. *Other duties*—

- (a) The execution as local authority of the Acts relating to contagious diseases of animals,⁴ to destructive insects,⁵ to fish

fining persons in lunatic asylums and for their release have always been regarded as purely judicial. The inspection of asylums, on the other hand, is an administrative duty, and as such is conferred on the Visiting Committee of the County Council, which has to present an annual report to the County Council. Where a county borough is a joint contributor to a county asylum it may appoint two members to the Visiting Committee, to which private founders and benefactors may also belong. The Asylums Committee is one of the committees which enjoy plenary powers, its acts not requiring the approval of the County Council.

¹ Sec. 29 and 30 Vict. c. 117, 118, and 35 and 36 Vict. c. 21.

² This was the end of a long chapter in bridge legislation, which began with the famous statute of 22 Henry VIII. c. 5.

³ Cf. 30 and 31 Vict. c. 102, sec. 34, 31 and 32 Vict. c. 48, sec. 18, and other statutes relating to registration, etc., and referred to, p. 280 *sqq.* of vol. i.

⁴ The law relating to contagious diseases of animals was codified by an Act of 1894 (57 and 58 Vict. c. 57), and amended by 59 and 60 Vict. c. 15.

⁵ The Destructive Insects Act 1877 (40 and 41 Vict. c. 68).

conservancy,¹ to wild birds,² to weights and measures,³ and to gas-meters, and of the Local Stamp Act 1869.

- (b) Any matters arising under the Riot (Damages) Act 1886.
- (c) The registration of rules of scientific societies under various Acts.

2. Besides the above powers, which were transferred from the Justices in Quarter Sessions, the following powers, previously exercised by the Justices out of Quarter Sessions, were also transferred to County Councils by the Act of 1888:—

- (1) The licensing of theatres.⁴
- (2) The execution as local authority of the Explosives Act 1875.⁵

3. A third class of powers conferred on Justices by local Acts *may* be transferred to County Councils by the Local Government Board, under the provisions of section 4 of the Act of 1888—

Where it appears to the Local Government Board that any powers, duties, or liabilities of any Quarter Sessions or Justices, or any committee thereof, under any local Act are similar in character to the powers, duties, and liabilities transferred to County Councils by this Act, or relate to property transferred to a County Council by this Act, the Board may, if they think fit, make a Provisional Order for transferring such powers, duties, and liabilities to the County Council.

4. Fourthly, the regulation and management of main roads—*i.e.* all roads in a county which are “for the time being main roads⁶ within the meaning of the Highways and Locomotives (Amendment) Act 1878”—were transferred to

¹ Cf. Salmon Fisheries Acts 1861, 1865, 1873, and Fresh Water Fisheries Acts 1878 and 1884.

² Wild Birds Protection Act 1880 (43 and 44 Vict. c. 35), amended by 57 and 58 Vict. c. 24.

³ Weights and Measures Act 1878 (41 and 42 Vict. c. 49), amended by several later Acts.

⁴ In the words of the Act (L.G.A. 1888, sec. 7 (a)), theatres are “houses or places for the public performance of stage plays.” These licenses are granted under 6 and 7 Vict. c. 63, by section 23 of which “stage play” is made to include every tragedy, comedy, farce, opera, burletta, interlude, melodrama, pantomime, or other entertainment of the stage, or any part thereof; but the Act does not apply to any booth or show “allowed in any lawful fair, feast, or customary meeting of the like kind.”

⁵ 38 and 39 Vict. c. 17.

⁶ Local Government Act 1888, sec. 11: “Main roads” are a legal creation of the Highways and Locomotives Act of 1878, by which they were substituted for the old turnpike roads managed by trustees and supported by tolls.

County Councils. This promotion of the County Council to a position of priority among highway authorities may be regarded as an outcome if not the consummation

Main roads.

of a movement set on foot by Sir Robert Peel in 1846 for enlarging the areas (with a view to improving the efficiency and economy) of highway authorities in England.¹

It is the duty of the County Council to see that main roads are properly maintained and policed, obstacles to traffic removed, and encroachments prevented. But although the whole duty and cost of maintaining main roads attaches *prima facie* to the County Council, the Council may agree to pay a highway authority² an annual sum for the maintenance of the main roads in its area, or may compel a highway authority to maintain its main roads for an annual sum agreed or decided by the arbitrators of the Local Government Board. A County Council may declare a road to be a main road as connecting great towns, or as being a thoroughfare to a railway station or otherwise. But in that case, within twelve months of the declaration taking effect, an urban district council may claim the right to retain the powers and duties of repairing and maintaining so much of the road as is within its district, and may compel the County Council to contribute an annual sum either by agreement or by arbitration of the Local Government Board.³ A County Council may also, at its discretion, contribute towards the costs of repairing or improving any highway or public footpath in the county. This gives the County Council a practical control over the highway authorities of the county similar to that exercised

¹ See his famous "Commercial Statement," introducing the repeal of the Corn Laws, 27th January 1846 (Hansard, p. 266 *sqq.*), in the course of which he condemns the condition of the highways, and attributes it to the small area of the 16,000 highway authorities then existing in England. Sir Robert Peel was trying of course to induce the rural landlords to acquiesce in the repeal of the Corn Laws.

² The County Council is not itself a highway authority, though it has the powers of a highway authority in respect of main roads. On the application of the County Council a main road may be "dis-mained" by the Local Government Board. As a matter of fact, half the main roads in England are repaired by the highway authorities under agreements with the County Council.

³ Local Government Act 1888, sec. 11. The whole of this section should be consulted for the highway powers of County Councils.

by the Home Office over the police authorities. For, of course, a County Council will only make a grant-in-aid if the smaller authority can satisfy its inspector or surveyor.¹ It would obviously be inconvenient to have two lighting authorities in the same district; and accordingly the business of lighting main roads is assigned to the same authority which lights the other highways, roads, and footpaths of the district.²

5. A County Council is also empowered to prevent the pollution of streams and rivers in the county by putting in force the provisions of the Rivers Pollution Prevention Act 1876.³ For the purpose of regu- River pollution.lating rivers systematically County Councils may combine in a joint-committee constituted under a provisional order of the Local Government Board, and may defray the costs jointly. Any County Council is also empowered to contribute towards the costs of any prosecution instituted under the Act of 1876 by any other county council or by any urban or rural authority.⁴

6. The same power of opposing, at the expense of the rate-payers, Bills affecting the interests of the inhabitants of the district, which belongs to a Municipal Council under the Act

¹ There is, however, this important difference, that if the County Council refuse a grant-in-aid to a District Council, the District Council may require the matter to be referred to the arbitration of the Local Government Board.

² For a description of the old common law and statutes with regard to highways we must be content to refer the student to Gneist's *Self-Government*, chap. xii.; and Clifford's *Private Bill Legislation*, vol. ii. chap. vii. Wright and Hobhouse (*Outline of Local Government and Taxation in England and Wales*, p. 46 *sqq.*) give a good summary of the present law and of the complicated system from which it was evolved. For a comprehensive account of the common and statutory law of the subject, see Glen, or Pratt, on highways. The present law of highways is built up on the Highway Act of 1835, and the Highways and Locomotives Amendment Act 1878 (41 and 42 Vict. c. 77), which vested various powers relating to bridges and roads in the county authority. The Locomotives on Highways Act of 1896 (59 and 60 Vict. c. 36), and also the Barbed Wire Act 1893 (56 and 57 Vict. c. 32), extend the police functions exercisable by a County Council over highways. Orders, bye-laws, and regulations made under these Acts are enforced by the summary jurisdiction of Justices of the Peace.

³ Cf. 56 and 57 Vict. c. 31 (The Rivers Pollution Prevention Act 1893), and the Public Health Act of 1875, sec. 17.

⁴ Local Government Act 1888, sec. 14.

of 1872,¹ was conferred on County Councils by the County Councils Act. And it is provided in addition that "no consent of owners and ratepayers shall be required" to sanction such proceedings. So far, then, as opposition is concerned, the County Council is more independent than a Municipal or District Council. But the power of promoting Bills is expressly withheld in the very section (sec. 15) which applies the Act of 1872 to County Councils. "This section shall not empower a County Council to promote any Bill in Parliament, or to incur or charge any expense in relation thereto." A County Council's power of initiative is therefore reduced to such special cases as Provisional Order Bills under the Railway and Canal Traffic Act 1888.² Whether, apart from Acts of Parliament, a County Council may not have some power of initiative in Parliament is perhaps still doubtful. In their third edition of the Act of 1888 Messrs. Macmorran and Dill observe, upon section 15—

Parliamentary
proceedings.

It does not follow, however, from the Borough Funds Act, as applied by the text, that the County Council will have no power to institute or defend legal proceedings or to oppose Bills in Parliament except pursuant to the provisions of that Act. A body like a County Council may have power independently of any statute to devote the funds in their hands for the protection of the rates or of their powers and privileges.

And the learned authors refer to a series of authorities for the doubt, commencing with *Bright v. North* (2 Phillips 216) and ending with *Cleverton v. St. Germain's Rural Sanitary Authority* (56 L.J. Q.B. 83).³

7. With the general administration of the sanitary laws a County Council has little or nothing to do. It has, however,

¹ The Borough Funds Act 1872 (35 and 36 Vict. c. 91).

² Cf. 54 Vict. c. 12, sec. 1.

³ Cf. our own observations, vol. i. p. 363 *sqq.* In any case it seems surprising at first sight that County Councils should in this respect have less power than the councils of urban and rural districts included in their area. The reasons would appear to be: (1) Parliament considers one power in one area enough; (2) A County Council has few duties which require applications to Parliament; and (3) Provisional Orders give most of the powers required. A Bill has several times been introduced into Parliament giving power to County Councils to promote Bills. In 1902 a Bill for that purpose was introduced by the Government, but was dropped owing to pressure of time. The London County Council has this power, and uses it freely.

one or two special powers and duties which relate to public health and bring it into contact with the sanitary authorities proper. It may, if it sees fit, appoint one, or more than one, medical officer of health, who ^{Public health.} may by arrangement fill the place in any sanitary district of the medical officers whom the Act of 1875 obliges a District Council to appoint. Every medical officer of health for any district in the county is bound to send "periodical reports" to both the Local Government Board and the County Council.¹ By the Local Government Act of 1894 some authority over Rural District Councils is conferred upon County Councils (*e.g.* by sec. 16).

Another power is conferred by the Isolation Hospitals Act 1893, which enables a County Council, on the petition of district councils, parish councils, or ratepayers, to constitute a hospital district and provide an isolation hospital for persons suffering from infectious diseases within that district.

8. Last of all we come to the management of the County Police. This, as we have seen, now attaches to a standing joint-committee composed half of county councillors and half of county Justices. The old-fashioned Conservatives would have liked to leave police adminis- ^{County Police.} tration in the hands of the Justices; the Radicals would have transferred it to a Watch Committee of the County Council. The standing joint-committee may be regarded as a compromise devised by the Unionist Government of 1888 in order to reconcile its two wings. The standing joint-committee has its own rules of procedure and standing orders, administers by sub-committees,² and is wholly independent of the council. It stands in the same relation to the county police as does the Watch Committee to the police of a borough. It appoints the chief constable and superintends the organisation of the force. The county magistrates have not only this direct share in the management of the police: they may also give instructions and orders to the police in the ordinary course of justice; they

¹ Local Government Act 1888, secs. 17-19.

² Compare Standing Orders of the Standing Joint-committee for the county of Warwick, October 1889 and July 1897. The standing joint-committee meets, as a rule, only four times a year—its sub-committees much more frequently.

also retain, like the borough bench, certain other non-judicial powers and duties, such as the reading of the Riot Act in cases of disturbance. But as the Justices have no funds at their disposal for defraying expenses, they would be well advised not to take serious steps, such as calling in the military, without the consent of the standing joint-committee, which should now be regarded as the sole police authority of the county. An illustration is afforded by a quarrel which occurred, since the passing of the Act of 1888, between the county magistrates and the County Council of Glamorganshire. In May 1898 serious riots occurred in that county in connection with a strike of the miners. Troops were called in; and the magistrates made arrangements with shopkeepers for maintaining the soldiers and supplying them with food and lodging for a considerable time. The magistrates sent in a bill for £2703:17:4 to the County Council, and, on the Council refusing to pay, applied to the Queen's Bench Division for a mandamus commanding the County Council to pay that sum out of the county fund. The Court refused to grant the mandamus on the ground that the expenses were not chargeable on the county funds, but must be borne by the Crown. To the plea that the Justices are local Justices, and therefore the expenses incurred by them should be local, Mr. Justice Channell replied that "the Justices are officers of the Crown, although they have a local jurisdiction." It was not contended that the county should bear the expense of the carriage of troops.¹

9. From the county police we now pass to the group of functions transferred from the central administration to the County Council. In spite of the zeal of leading statesmen—Unionists as well as Home Rulers—the grand scheme of devolution projected in 1888 was not carried out. All that the Government would do was to provide a statutory basis for future devolution. There was indeed a general transference of central powers to feeling that it would be well to wait and see how County Councils the new bodies acted. Accordingly the Act provides that it shall be lawful for the Local Government Board to make from time to time a provisional order for trans-

¹ See for this interesting case, *R. v. Glamorgan County Council, ex parte Miller* 1899, 2 Q.B., p. 26 *sqq.*

ferring to County Councils (with such exceptions and modifications as might be expedient) any powers, duties, and liabilities of Her Majesty's Privy Council, a Secretary of State, the Board of Trade, the Local Government Board, or the Education Department, or any Government department, as are conferred by or in pursuance of any statute, and appear to relate to matters arising within the county, and to be of an administrative character. For the purpose of effecting the transfer, any power vested in the King in Council may be transferred by the order. But before any such order is made the draft must, if it relates to the department of a Secretary of State or to the Board of Trade or any other department, be approved by such secretary, board, or department.¹ Hitherto, however, in spite of the congested state of its business, the Local Government Board has not availed itself of these powers, which are no more than a theoretical acknowledgment by Parliament that central control over local government stands in need of decentralisation.

There is one, but only one, case in which the Act itself transfers a function of the central government to County Councils, and that is in regard to all the internal divisions of counties except municipal boroughs. The simplest way of exhibiting the scope of a County Council's power to regulate the boundaries and wards (if any) of the districts and parishes which it comprises will be to set out a long, but perfectly intelligible, section of the Act of 1888—

The regulation
of boundaries
and wards.

SECTION 57.—(1) Whenever a county council is satisfied that a *prima facie* case is made out as respects any county district not a borough, or as respects any parish, for a proposal for all or any of the following things—that is to say—

- (a) The alteration or definition of the boundary thereof;
- (b) The division thereof or the union thereof with any other such district or districts, parish or parishes, or the transfer of part of a parish to another parish;
- (c) The conversion of any such district or part thereof, if it is a rural district, into an urban district, and if it is an urban district, into a rural district, or the transfer of the whole or any part of any such district from one district to another, and the formation of new urban or rural districts;
- (d) The division of an urban district into wards; and

¹ See Local Government Act 1888, secs. 10, 37.

- (e) The alteration of the number of wards, or of the boundaries of any ward, or of the number of members of any district council, or of the apportionment of such members among the wards,—

the county council may cause such inquiry to be made in the locality, and such notice to be given, both in the locality, and to the Local Government Board, Education Department, or other Government Department, as may be prescribed, and such other inquiry and notices (if any) as they think fit, and if satisfied that such proposal is desirable, may make an order for the same accordingly.

(2) Notice of the provisions of the order shall be given, and copies thereof shall be supplied in the prescribed manner, and otherwise as the county council think fit; and if it relates to the division of a district into wards, or the alteration of the number of wards or of the boundaries of a ward, or of the number of the members of a district council, or of the apportionment of the members among the wards, shall come into operation upon being finally approved by the county council.

(3) In any other case the order shall be submitted to the Local Government Board; and if within three months after such notice of the provisions of the order as the Local Government Board determine to be the first notice, the council of any district affected by the order, or any number of county electors registered in that district or in any ward of that district, not being less than one-sixth of the total number of electors in that district or ward, or if the order relates only to a parish, any number of county electors registered in that parish, not being less than one-sixth of the total number of electors in that parish, petition the Local Government Board to disallow the order, the Local Government Board shall cause to be made a local inquiry, and determine whether the order is to be confirmed or not.

(4) If any such petition is not presented, or being presented is withdrawn, the Local Government Board shall confirm the order.

(5) The Local Government Board, on confirming an order, may make such modifications therein as they consider necessary for carrying into effect the objects of the order.

(6) An order under this section, when confirmed by the Local Government Board, shall be forthwith laid upon the table of both Houses of Parliament, if Parliament be then sitting, and, if not, forthwith after the then next meeting of Parliament.

(7) This section shall be in addition to, and not in derogation of, any power of the Local Government Board in respect of the union or division or alteration of parishes.

It will be observed that the County Council is made to act in concert with the Local Government Board, but that a final clause has been inserted to guard against the supposition which might otherwise have arisen, that the old powers of the Board were excluded by the new provisions. The procedure to be followed is indicated in the Act. In practice a special Inquiry Committee is constituted by the County Council, and

in the more important cases, which concern the boundaries not of wards but of districts, a formal inquiry is held on the spot and presided over by an inspector sent down by the Local Government Board for that purpose. The findings of the committee are laid before a regular meeting of the County Council, and thereupon the order of the County Council is made, subject to the powers above conferred upon the Local Government Board of disallowance or modification.¹

By the Parish Councils Act of 1894, passed under Gladstonian auspices, an impetus was given to the movement for decentralisation, and the powers given to County Councils in 1888 were considerably extended. Thus the County Council was empowered in certain specified cases to create and dissolve parish councils, to group, alter, unite, and divide parishes, and to fix the number of parish councillors. Under the same Act a County Council can confer on a parish meeting any administrative power of a parish council; it may determine questions concerning parochial records and charities. It may advance money to parish councils, and its sanction is necessary for their loans. The County Council is also empowered to dispense with some minor disqualifications otherwise attaching to candidates for the office of district or parish councillor, to dispose of difficulties about elections, and to fix the scale of election expenditure. Lastly, on complaint made by a parish council or by parochial electors against a rural district council for neglecting its duties as to sanitation, allotments, etc., a County Council has the right to order the rural district to perform these duties or itself to perform them.²

If, then, the Act of 1894 be taken in conjunction with the Act of 1888, it becomes clear that legislation is following slowly in the wake of public opinion towards the establishment of intermediate organs of administrative control. These organs will be County Councils acting severally or in groups; and the object to be attained is to check the growth of the central bureaucracy, and at the same time to improve the unity, regularity, and efficiency of county administration as a whole.

¹ On the procedure, cf. further order of Local Government Board, 14th September 1889.

² For the above summary see Wright and Hobhouse, note (g), p. 34. Cf. also Local Government Elections Act 1896.

As yet the movement is only in its beginning. It is certain to go further, stimulated by strong county prejudices, and a national abhorrence from bureaucratic government.

10. The last group of a County Council's functions which calls for notice here consists not of powers and duties transferred from other authorities, but of powers and duties newly created and attached to County Councils in 1888 and subsequent years. Many felt needs had remained unsatisfied because the old organisation of the county was known to be unsuitable. Their urgency was a main cause of the reform of 1888, which brought into existence in every county a Parliamentary body well adapted by its representative constitution and ample resources to inspire confidence in administering social and economic legislation. Two great fields of work were thrown open by the Act of 1888—first, the execution of a new agrarian policy; second, the development of an organised system of secondary and technical education. We shall have more to say about the practical aspects of both these matters in later chapters, contenting ourselves here with an outline of the statutory limits within which the activity of the County Council is confined.

The agricultural powers of a County Council proceed from the Allotments Act of 1887,¹ the Amending Act of 1890,² the Small Holdings Act of 1892, and certain sections

Allotments and
small holdings.

of the Local Government Act 1894. The purpose of this legislation is to give agricultural labourers an interest in the cultivation of the soil by employing public funds and public bodies to facilitate the lease or purchase of allotments and small holdings. And to this end a certain amount of compulsion may be used to compel owners to sell. The District Council is the primary authority for carrying out the Allotments Acts and the Local Government Act of 1894; but if the District Council refuses to act on the request of a parish council or six ratepayers in a parish, then the duty of carrying out the law devolves on the County Council. For this purpose a standing committee of the County Council is formed. But the Legislature did not confine itself to allotments for cottage or market gardens. Allotments are only a part of the problem. They are not large enough for a family to make a

¹ 50 and 51 Vict. c. 48.

² 53 and 54 Vict. c. 65.

living out of. They are popular in factory or mining villages, where outdoor garden work is a pleasant recreation at the end of an eight or nine hours' day. But the farm-labourer with regular work has no time for gardening, and his natural ambition is to become in time a small farmer. The Small Holdings Act of 1892¹ may be said to have provided the machinery for creating a peasant proprietary. It enables every County Council to purchase land, to cut it up into small farms, to erect houses and farm buildings, and to sell the farms (to be paid for by annual instalments) to men who will agree to live and work upon them. For this purpose also a special standing committee of the County Council is to be formed.² A later Act—the Small Dwellings Acquisition Act of 1899—aims at alleviating the housing problem by enabling Town Councils and County Councils to help the inhabitants of their districts to acquire their own houses; but it is not likely to bear any practical fruits.

In another very important province of agricultural policy a new field of activity has been opened to County Councils by the Fertilisers and Feeding Stuffs Act 1893,³ which obliges County Councils, either severally or in combination, to appoint, with the approval of the Board of Agriculture, agricultural chemists as district analysts to examine feeding stuffs and manures. Every farmer in the county is entitled to have samples analysed by this new official; and the County Council is entitled to take proceedings for penalties against manufacturers of foods or manures who are found to have given a false warranty or no warranty at all. The rapidity with which this Act has been put into force, as shown by the proceedings of many County Councils, affords ample evidence of its utility.⁴

Technical education may be briefly described as "instruction in the principles and practice of domestic, commercial, agricul-

¹ 55 and 56 Vict. c. 31.

² There are two practical difficulties in the way of the working of the Act. One is to get the County Councils to make use of their powers. The second is the want of credit banks which would supply the small English farmer with capital to work his land and do for him what the Raiffeisen banks have done for Denmark, Holland, and many parts of Germany and Austria.

³ 56 and 57 Vict. c. 56.

⁴ Cf. 62 and 63 Vict. c. 51, for the powers of the Board of Agriculture with regard to agricultural produce for human food.

tural and industrial work.”¹ By the Technical Instruction Act of 1889, “technical instruction” was defined to mean “instruction in the principles of science and art applicable to industries, and in the application of special branches of science and art to specific industries or employments,” and to include modern languages and commercial and agricultural subjects sanctioned by the Department of Science and Art (now the Board of Education). It was distinguished from “manual instruction,” which meant “instruction in the use of tools, processes of agriculture, and modelling in clay, wood, or other material.” By the above-mentioned Act and a number of supplementary statutes² there has been built up a system of technical instruction, still in many ways very imperfect and strangely separated from the scheme of popular education. But by the Education Act of 1902 elementary education, which had previously been carried on by School Boards and voluntary religious organisations, was partially transferred to the councils of counties and county boroughs. A sketch of the new conditions thus created will be found in a later chapter.³

One more addition to the general activity of County Councils since their establishment in 1888 requires special mention. Railways had hitherto been regarded by the English Legislature as belonging to the sphere of private enterprise, though subject to the control of the Board of Trade. But in 1896 for the first time,⁴ by the Light Railways Act, an exception was established—the Legislature at last recognising the advisability of allowing railways to be built out of public funds and administered by public authorities. The Light Railways Act, indeed, only applies to minor and secondary lines, but it is a significant step in the

¹ See Royal Commission on Technical Education, 1888.

² The following may be mentioned:—Technical Instruction Acts 1889 and 1891; Local Taxation (Customs and Excise) Act 1890 (53 and 54 Vict. c. 60); Schools for Science and Art Act 1891 (54 and 55 Vict. c. 61); Technical and Industrial Institutions Act 1892 (55 and 56 Vict. c. 29). The first two are repealed and superseded by the Education Act 1902.

³ See Part V., chap. ii. p. 224 *sqq.*

⁴ If we exclude the Tramways Act of 1870, which gave power to local authorities, not including county authorities, to construct tramways, “but not of course to work them,” as Mr. Shaw-Lefevre explained in moving for leave to introduce the Bill.

march of public opinion towards the principle that the State may properly own and manage natural monopolies. The Act empowers the council of any county, borough, or district authorised by an order of the Light Railway Commissioners—(a) themselves to undertake the construction or working, or to contract for the construction or working, of the light railway authorised; (b) to advance to a light railway company, either by way of loan or as part of the share capital, or in both ways, any amount authorised by the order; (c) to co-operate for the above purposes with any other council or person or body of persons.¹ The Light Railway Commissioners were a temporary commission of three, appointed by the President of the Board of Trade, but their existence has been continued by Parliament, as might have been expected, considering the importance to agriculture and agricultural rents of good railway communication and low railway rates.

Lastly, by 61 and 62 Vict. c. 60, a County Council may maintain or contribute to inebriate retreats and inebriate reformatories.

In this whole sphere of activity a County Council governs in a very similar fashion to the councils of municipal boroughs. Like them it is empowered and obliged to issue general regulations for the good rule and government of the county in the form of bye-laws, and to take measures to ensure their observance in the ^{Bye-laws of County Councils.} county.² A similar power of subordinate legislation for particular purposes is conferred by individual statutes. Thus the Weights and Measures Acts and the Highway and Locomotives Acts empower the County Council to pass bye-laws for regulating the sale of coal and vehicular traffic. The difficult question as to what constitutes the validity of a bye-law has already been discussed in a chapter upon municipal boroughs;³ but as the important extension of autonomy there referred to arose upon a county bye-law, it is

¹ The Act provides that a Council shall not construct or work or advance money for any light railway outside its own boundary except jointly (by joint-committee) with the Council of the outside area, or on proof to the satisfaction of the Board of Trade that such construction or working or advance is in the interests of their own district.

² Cf. Local Government Act 1888, sec. 16.

³ See vol. i. p. 327 *sqq.*

possible that the additional respect with which the courts are now bound to approach the consideration of a bye-law only applies to bye-laws made by the council of a county or county borough. What may be regarded as the leading case of *Kruse v. Johnson* came before a specially constituted court¹ of the Queen's Bench Division in the form of a special case stated by five Justices of the county of Kent under the Summary Jurisdiction Acts. At a court of summary jurisdiction held for a division of that county the respondent, a superintendent of police, preferred an information against the appellant, "for that he on the day therein specified did sing in a certain highway, within fifty yards of a dwelling-house there, after being required by a constable to desist, contrary to a bye-law in that behalf made by the County Council of Kent."

The bye-law in question, which was made by the County Council of Kent under section 16 of the Local Government Act 1888, ran as follows:—

Playing musical instruments, etc.—No person shall sound or play upon any musical or noisy instrument, or sing in any public place or highway within fifty yards of any dwelling-house, after being required by any constable, or by any inmate of such house personally, or by his or her servant, to desist.

At the hearing of the information it was proved to the satisfaction of the Justices that the appellant, who was conducting an open-air religious service, did in the place and on the day in question, begin to sing a hymn within fifty yards of a dwelling-house, and continued to do so after he had been requested by a constable to desist. It was further proved by the occupier of the dwelling-house that Kruse's singing was an annoyance to him; but it was not proved that on the day in question he had requested the respondent (Constable Johnson) to ask the appellant Kruse to desist. The occupier had, however, complained to the police on previous occasions.

It was contended on behalf of the appellant that the bye-law was invalid. In giving the judgment of the majority against the appellant, the Lord Chief-Justice began by defining the bye-law in question—

¹ L.R. 1898, 2 Q.B. p. 91. The case first came before a Divisional Court consisting of Lord Russell, C.J., and Mathew, J. They differed, and the specially constituted Court was called together to re-hear the case.

A bye-law of the class we are here considering I take to be an ordinance affecting the public, or some portion of the public, imposed by some authority clothed with statutory powers, ordering something to be done or not to be done, and accompanied by some sanction or penalty for its non-observance. It necessarily involves restriction of liberty of action by persons who come under its operation as to acts which, but for the bye-law, they would be free to do or not to do as they pleased. Further, it involves this consequence, that, if validly made, it has the force of law within the sphere of its legitimate operation.

Next, after surveying the statutory powers to make bye-laws which have been conferred on local authorities, Lord Russell pointed out "the checks or safeguards under which this very wide authority of making bye-laws is exercisable." Two-thirds of the whole Council must be present; there must be antecedent publication; the bye-law does not come into force at once, and may be disallowed by the central authority. Lord Russell agreed "that the presence of these safeguards in no way relieves the Court of the responsibility of inquiring into the validity of bye-laws where they are brought in question, or in any way affects the authority of the Court in the determination of their validity or invalidity." At the same time it is hinted that the bye-laws of a public representative body are on a higher level than those of private companies.

Parliament has thought fit to delegate to representative public bodies in towns and cities, and also in counties, the power of exercising their own judgment as to what are the bye-laws which to them seem proper to be made for the good rule and government in their own localities. . . . It is to be observed, moreover, that the bye-laws having come into force are not like the laws, or what were said to be the laws, of the Medes and Persians—they are not unchangeable. The power is to make laws from time to time as to the authority shall seem meet, and if experience shows that in any respect existing bye-laws work hardly or inconveniently, the local authority, acted upon by the public opinion, as it must necessarily be, of those concerned, has full power to repeal or alter them. It need hardly be added that should experience warrant that course, the Legislature which has given may modify or take away the powers it has delegated. I have thought it well to deal with these points in some detail, and for this reason—that the great majority of the cases in which the question of bye-laws has been discussed are not cases of bye-laws of bodies of a public representative character entrusted by Parliament with delegated authority, but are for the most part cases of railway companies, dock companies, or other like companies, which carry on their business for their own profit, although incidentally for the advantage of the public. In this class of case it is right that the courts

should jealously watch the exercise of these powers, and guard against their unnecessary or unreasonable exercise to the public disadvantage. But when the Court is called upon to consider the bye-laws of public representative bodies clothed with the ample authority which I have described, and exercising their authority accompanied by the checks and safeguards which have been mentioned, I think the consideration of such bye-laws ought to be approached from a different standpoint. They ought to be supported if possible. They ought to be, as has been said, "benevolently" interpreted, and credit ought to be given to those who have to administer them that they will be reasonably administered. This involves the introduction of no new canon of construction. But further, looking to the character of the body legislating under the delegated authority of Parliament, to the subject-matter of such legislation, and to the nature and extent of the authority given to deal with matters which concern them, and in the manner which to them shall seem meet, I think Courts of Justice ought to be slow to condemn as invalid any bye-law so made under such conditions, on the ground of supposed unreasonableness.

Upon these grounds Lord Russell was led to lay down a very important dictum upon the question of the reasonableness of bye-laws—

A bye-law is not unreasonable merely because particular judges may think that it goes further than is prudent or necessary or convenient, or because it is not accompanied by a qualification or an exception which some Judges may think ought to be there. Surely it is not too much to say that in matters which directly and mainly concern the people of the country, who have the right to choose those whom they think best fitted to represent them in their local government bodies, such representatives may be trusted to understand their own requirements better than Judges. Indeed, if the question of the validity of bye-laws were to be determined by the opinion of Judges as to what was reasonable in the narrow sense of that word, the cases in the books on this subject are no guide; for they reveal, as indeed one would expect, a wide diversity of judicial opinion, and they lay down no principle or definite standard by which reasonableness or unreasonableness may be tested.

It is not necessary to follow Lord Russell in his application of this doctrine to the particular case. But it is to be observed that if this or any other bye-law were, as he says, "gratuitously or vexatiously put in force," the policeman can be "taught a lesson" by his official superiors, or by the magistrates, who may also, if they think the case so trifling that it is inexpedient to inflict any punishment, dismiss the information.¹

¹ See Summary Jurisdiction Act 1879, sec. 16.

Bye-laws of the class of that considered and held valid in the case of *Kruse v. Johnson*, "for the good rule and government of the county," or parts of a county, aim at regulating a variety of subjects, as may be seen from the following titles taken at random from the year-books of County Councils:—"Profane songs, indecent conduct, abusive language or behaviour, betting in streets, posting bills without permission, pulling down notices, defacing milestones and guide-posts, driving bulls, lights on vehicles, carrying dangerous articles along footpaths, shooting galleries." The penalty for offences against these bye-laws is a fine not exceeding five pounds. Proceedings are taken before a Justice of the Peace at a court of summary jurisdiction. Any bye-laws framed by a County Council in accordance with sections 182-187 of the Public Health Act require the sanction of the Local Government Board; but bye-laws for the good government of a county, like those for the good government of a borough, come into operation automatically after the expiration of forty days, unless they are disapproved by Order in Council. Like Borough Councils, County Councils may, if they choose, regulate any difficulties that may arise by simple resolution; and they have also, as we have already noticed, full power to regulate by standing orders their procedure and that of their committees, as well as to frame rules and regulations for their officers and servants without any interference by a central department.

The last point brings us back to the main principle of the Act of 1888, which was to give the County Council, as nearly as possible, complete autonomy within the statutory limits assigned to its operations. It is true that in some particulars of its administration the County Council is placed in a certain subordination to the Local Government Board; but generally speaking, except in regard to finance, the Board has no more direct mandatory power than over the strictly municipal or non-sanitary work of Borough Councils. The financial control exercised by the Board is an important exception, which must be reserved for the next chapter.

Our survey of the sphere of county administration is now done. The picture we have tried to present of the new representative body, now just in its teens, is that of a

busy, capable, vigorous, but not yet fully-developed organism. Young as it still is, the County Council has lived long enough to justify some of the hopes placed by reformers in the substitution of a local parliament for an appointed bench. Much important and useful work has been successfully undertaken by County Councils—work which Quarter Sessions would have been either incompetent or disinclined to undertake—as, for example, the development of a system of technical education. Agriculture, too, has benefited by the change of administration. We need not again insist upon the quiet and business-like fashion in which the transference of county business from the old to the new body was effected, or on the complete absence of friction, or on the maintenance of the old traditions of honest and impartial administration. Every observer of County Councils will readily own that their record is a good one, and that their usefulness and activity will probably increase as time goes on, though whether the new Education Committees will be able to cope successfully with their new responsibilities is a question about which grave doubts are entertained. Some idea of the administrative difficulties which these Committees or the County Councils themselves will have to face may be obtained from a later chapter on Education.

CHAPTER IV

THE FINANCE AND FINANCIAL ORGANISATION OF COUNTY COUNCILS¹

THE transference of county business from Quarter Sessions to representative bodies involved a new conception of the purposes of county government, which again involved radical changes of a financial character. By the exclusion of all towns of more than 50,000 inhabitants from the county, the financial relations previously subsisting between boroughs and counties were in many cases disturbed, and had to be readjusted. If the creation of county boroughs made for simplicity, the new and extended system of imperial grants-in-aid of local taxation which accompanied the establishment of County Councils most certainly added to the complexity of county finance; for admirable as were Mr. Goschen's intentions, he altogether failed to carry them out; and eventually, instead of separating national from local revenues, the Government of 1888 adopted the present system of "assigned revenues." These assigned revenues are allocated to the various local authorities in proportion to the discontinued grants so far as contributions from the Death Duties and Beer and Spirit Surtaxes are concerned, while the license duties are allocated to the areas in which they are collected, subject to an equitable adjustment between counties and county boroughs.² But this unfortunate

¹ Cf. secs. 20-27, 31, 39, 64-77, Local Government Act 1888, Local Taxation Commission Reports and Memoranda (1901), Report of Commissioners appointed under Local Government Act 1888, sec. 61 (see Macmorran and Dill, p. 749 *sqq.*; also Wright and Hobhouse, p. 100 *sqq.*)

² Cf. vol. i. p. 199 *sqq.*, and Local Taxation Commission (1901), Final Report by Sir E. Hamilton and Sir G. Murray, pp. 107, 116, and 117.

confusion of public accounts has no essential bearing upon the financial powers and financial organisation of a County Council which we have now to describe.

County Councils have the same right to purchase and let land which is enjoyed by local authorities under the Public Health Act.¹ Like other local authorities, the County Council is entrusted with the management of real and personal property. In the words of the Act—

Land and
Property.

On and after the appointed day all property of the quarter sessions of a county, or held by the clerk of the peace, or any justice or justices of a county, or treasurer, or commissioners, or otherwise for any public uses and purposes of a county, or any division thereof, shall pass to and vest in and be held in trust for the council of the county, subject to all debts and liabilities affecting it, and shall be held by the county council for the same estate, interest, and purposes, and subject to the same covenants, conditions, and restrictions, for and subject to which that property is or would have been held if this Act had not passed, so far as those purposes are not modified by this Act.²

The records of Quarter Sessions, however, remain in the custody of that court, and the Justices may retain any pictures, chattels, or property not held for the public purposes of the county. By the following section a County Council

may from time to time, for the purpose of any of their powers and duties, including those which are to be executed through the standing joint-committee, acquire, purchase, or take on lease or exchange, any lands or any easements or rights over or in land, whether situate within or without the county, and may acquire, hire, erect, and furnish such halls, buildings, and offices as they may from time to time require, whether within or without their county.³

Outwardly the organisation of county finance was closely assimilated to the municipal pattern, with such small variations only as the difference of the subject-matter demanded. Of these variations the most important consists, as we have already noticed,⁴ in the constitution of a statutory finance committee

¹ Local Government Act 1888, sec. 65 (2).

² Local Government Act 1888, sec. 64 (1).

³ Local Government Act 1888, sec. 65 (1). This section puts the County Council in a better position than a Borough Council under the corresponding section of the Municipal Code. But it is modified by sub-section 2, already referred to.

⁴ Chap. ii. pp. 25, 26.

with supreme control over all expenditure other than for police purposes—a control summed up in the rule that an order for payment of any sum out of the county fund shall not be made except in pursuance of a resolution of the Council passed on the recommendation of the finance committee. The county fund, like the borough fund, is the financial reservoir into which all revenues flow County fund and payments. and out of which all expenses are defrayed. All payments out of the fund, except those made in pursuance of the specific requirement of an Act of Parliament, or of an order of a competent court, must be made by an order of the County Council, signed by three members of the finance committee present at the meeting of the Council and countersigned by the clerk of the Council. The same order may include several payments. All cheques made out in pursuance of an order must be countersigned by the clerk of the Council, or by a deputy approved by the Council. Finally, a powerful restraint on illegality is imposed by the provision that “any such order may be removed into the High Court of Justice by writ of *certiorari*, and may be wholly or partly disallowed or confirmed on motion and hearing, with or without costs, according to the judgment and discretion of the court.”¹

The old orders of Quarter Sessions were not subject to the review of the courts, and the change made by this clause constitutes a most important difference between the status of the new and that of the old county authority.²

The accounts of a county are kept like those of a borough. The nominal chief of the department is called the County Treasurer, one of the offices transferred from the Justices to the County Council.³ He is usually County accounts. a banker. In the larger counties a fixed salary⁴ is allowed him, but he is usually expected to pay interest at not less than

¹ Local Government Act 1888, sec. 80.

² Cf. Gneist, *Self-Government*, p. 375, and M.C.A. sec. 141. It will be remembered that the absence of any control over the rating and spending powers of Quarter Sessions was one of the principal objections raised by the advocates of reform.

³ Local Government Act 1888, sec. 3 (10).

⁴ By the County Council of Lancashire £1000, with a further sum not exceeding £925 for payment of the salaries of his clerks. But in this case the treasurer gives his whole time to the Council and no accountant is appointed. In West Suffolk the treasurer's salary is only £65 per annum.

2 per cent for any average balance exceeding £1000 which the county keeps at his bank. He is frequently bound to find security for £10,000. "The passing of the accounts of and the discharge of the county treasurer" is one of those duties previously exercised by Quarter Sessions which now devolves upon the County Council.¹ All payments to and out of the county fund must be made to and by the county treasurer.²

In practice, however, the real official manager of the book-keeping department is often the accountant—an officer not specifically mentioned in the county code. He has to keep the accounts in the manner prescribed by the Local Government Board. In the smaller counties his salary is extremely low. The county accountant of West Suffolk, for example, receives only £100 per annum, and finds security for £800.

The annual budget is made up as follows:—Before the end of the financial year (31st March) the chief official of each department draws up for his committee Annual estimates and budget. an estimate of his requirements for the coming year. This estimate is scrutinised and revised by the committee, and finally forwarded by the chairman of the committee to the finance committee for revision and recommendation to the Council. The following provision has been passed by the County Council of Nottinghamshire, the better to comply with the requirements of the statute:—

In every case where a committee adopt any resolution likely to materially increase their expenditure or reduce their revenue, they shall submit an estimate showing the effect of the proposal to the finance committee before it is discussed by the Council.³

When the finance committee has received all the estimates of the various committees, it is able to draw up an approximate estimate of the total receipts and expenditure of the County Council for the ensuing year. This preliminary budget is usually handed to each member of the County Council immediately before the meeting at which the annual financial statement is presented. It is usual to vote supplies for six months instead of for the whole year. A financial control remains, as we have seen, after the estimates are voted. On

¹ Local Government Act 1888, sec. 3 (3).

² Local Government Act 1888, sec. 80 (1).

³ County Council of Nottinghamshire, Standing Order 21.

the one hand, all the committees have to present reports of their expenditure as well as of their administrative work at each quarterly meeting. On the other hand, every item of expenditure is checked by the finance committee with the double object of ensuring that it complies both with the law and with the budget. At the end of the financial year a correct abstract of the County Council's accounts has to be prepared, printed, and laid before the Local Government Board.¹

From the outward organisation for the control of county expenditure, which bears, as we have shown, a marked resemblance to the system previously adopted by municipal boroughs, we pass to the revenue, and County revenues. here we find that the county has special features to distinguish it from its municipal prototype,²—features derived partly from the central position accorded to the county since 1888 in the scheme of local finance, partly to the special relations established between the imperial exchequer and county funds.

In spite, however, of the changes made in 1888, the financial system of the county is still based on the county rate. Originally, there were many different charges or rates imposed by Quarter Sessions, but these were all consolidated in 1739 by an Act of George the Second,³ and at the same time the Poor Rate assessment was adopted for county purposes. The Act of 1739 provided for one assessment, but

¹ For such duties of the Finance Committee and the County Treasurer as are not prescribed by the statute reference must be made to the Standing Orders of County Councils, e.g. *Lancashire Year-Book for 1899*, pp. 97, 98, 102-104; *West Suffolk Handbook*, p. 36; Isle of Wight Standing Order 75; Bedfordshire Standing Order 23, etc. The regulations as to the safe-keeping and use of the Common Seal of the Council correspond with those already described in vol. i. pp. 383-384, on Municipal Boroughs.

² For what follows, cf. Gneist, *Self-Government*, paragraphs 17-18. Cannan, *The History of Local Rates in England*, pp. 109-111, in his chapter on "The Assimilation of other Rates to the County Rate"; First, Second, and Final Reports of the Royal Commission on Local Taxation in England and Wales, 1899-1901. An important change in rating law has been made by the Agricultural Rates Act 1896, which halved the rates on agricultural land.

³ 12 George II. c. 29. By various Acts of Henry VIII., Elizabeth, James I., Charles II., William III., and Anne, Quarter Sessions were empowered to impose charges upon hundreds, wapentakes, and other divisions of the county for bridges, gaols, the conveyance of vagabonds, the employment of prisoners, etc. Some of the rates consolidated were so small (fractions of a farthing in the pound) that they did not defray the cost of assessment and collection (see Cannan, pp. 109-110).

not for one apportionment; and it was not until 1815 that the traditional divisions of the county for the purpose of apportionment were abolished by 55 George III. c. 51—an Act which might be described, on the analogy of modern London, as an Equalisation of Rates Act for Counties.¹ Apart from special Acts, the only remaining exception—if it can be called an exception—to the unification of county rates is the hundred rate, which may still be levied for the purpose of certain main roads and bridges.² The old hundred rate, to make good damage by riot, was abolished by the Act of 1888, which substitutes for it a police rate leviable in the district concerned. The county rate is still based on the poor rate,

County rates.

and its framework also remains almost unaltered under the two Acts of 1852 and 1866, which are still in force.³ Under the second section of the County Rate Act of 1852 a committee—then, of Justices; since 1888, of the County Council—is appointed for preparing or altering and amending a basis or standard for fair and equal county rates, to be founded and prepared rateably and equally, according to the full and fair annual value of the property rateable to the relief of the poor in every parish, township, borough, or place subject to the county rate. The County Rate Committee, as it is called, must be at least as numerous as the petty sessional divisions of the county, since each must have a representative on the com-

¹ Cf. the preamble and sec. 1: "Whereas the laws now in force are found ineffectual for the correction of the disproportions which now exist, or which may, from time to time, take place in the assessments of county rates: Be it hereby enacted . . . that from and after the passing of this Act it shall be lawful for the Justices of the Peace of the several counties in that part of Great Britain called England, assembled at their General or Quarter Sessions . . . to order and direct a fair and equal county rate to be made for all the purposes to which the county stock or rate is now, or shall hereafter be, made liable . . . and for that purpose to assess and tax every parish, township, and other place, whether parochial or extra-parochial, within the respective limits of their commission, rateably and equally, according to a certain pound rate (to be from time to time fixed and publicly declared by such Justices) of the full and fair annual value of the messuages, lands, tenements, and hereditaments, rateable to the relief of the poor therein."

² See Highways Act 1878, sec. 20, and Local Government Act 1888, sec. 3 (1), which transfers the making of the hundred rate from the Justices to the County Council.

³ The County Rate Acts 1852 and 1866. Cf. also the Local Government Act 1888, sec. 3 (1), the Agricultural Rates Act 1896, and the Tithes Rating Act 1899.

mittee. The basis or standard (which regulates the proportions payable by each place), although, as we have seen, it is prepared and revised from time to time by the County Rate Committee, is subject to confirmation by the County Council. The rate is levied by precepts addressed to the Guardians, requiring them to pay to the county treasurer the sums due from each parish in their union, which sums again the Guardians get from the overseers in the same way as sums for the relief of the poor.¹

Besides the county rate and the unimportant hundred rate, a County Council (and not, as might have been supposed, the Standing Joint-Committee) is authorised under the Act of 1888 to make, assess, and levy a police rate to defray that part of the expenses of county police which falls upon the county. The police rate is made on the same basis as the county rate, and appears on the same demand note, with such modifications of arrangement as are required by the differences in the area of the police county from that of the administrative county.²

The produce of rates levied by the County Council flows, as we have said, into the county fund, to which the Act provides that all receipts, whether for general or special county purposes, shall be carried. The expression, "general county purposes," means all purposes declared so to be by law, and also all purposes the expenses of which are defrayed by general assessment of the whole area of the administrative county.

Special county purposes, on the other hand, are defined as purposes "from contribution to which any portion of the county for the time being is exempt," and also include purposes involving an expenditure which is restricted by law to a hundred, division, or other limited part of a county. The importance of this distinction is manifest. It is the correlative of the distinction already noticed between general and special rates,³ and it causes a subdivision of the county fund into two

¹ Cf. Local Government Act 1888, sec. 3 (1), and Macmorran's note.

² See 3 and 4 Vict. c. 88, which provides for the raising of the police rate in detached portions of other (administrative) counties. Also see Macmorran's note on Local Government Act 1888, sec. 3 (1).

³ The police rate and the hundred rate are the two special rates mentioned in the Act.

accounts—the general county account and the special county account.¹ The two accounts must be carefully kept separate. If there is a deficiency in the general county account, then county contributions may be levied over the whole area and assessed on all the parishes; if in the special county account, then contributions may be levied to meet the deficiency on any parishes in the county which are liable to contribute to expenditure on special county purposes. The distinction between general and special expenditure is shown in the precepts as well as in the accounts.²

Besides the general county account and the special county account, there is another subdivision of the county fund, called the Exchequer Contribution Account. To that account, which has already been referred to in a chapter on Municipal Finance,³ are carried, as its name implies, the revenues derived by County Councils (and County Boroughs) from the National Exchequer. The account was created by section 23 (1) of the Local Government Act of 1888;⁴ but the financial policy which then received so great a development had been initiated long before by Sir Robert Peel. We have already described how a series of grants to local authorities, in aid of national or quasi-national services, grew up almost at haphazard under various statutes.⁵ The special merit claimed for Mr. Goschen's proposals in 1888 was not that they would increase, but that they would simplify, the financial chaos, at least so far as the

Exchequer
contributions.

¹ For the county fund and its subdivisions, see Local Government Act 1888, sec. 68. A number of items of expenditure are expressly declared to be general by the Act, *e.g.* and further (sec. 68 (2)), "all costs incurred by the County Council in the execution of their duties, which are not by law made special expenses, shall be general expenses." As a matter of practice, far more than two accounts or subdivisions of expenditure are usually kept.

² Local Government Act 1888, sec. 68 (4)-(7).

³ Vol. i. p. 372 *sqg.*

⁴ The section referred to runs as follows:—"All sums from time to time received by a County Council in respect of—

(a) The duties on the local taxation licenses, whether collected by the Commissioners of Inland Revenue or by the County Council; and

(b) The probate duty grant,

shall be paid to the county fund and carried to a separate account, in this Act referred to as the Exchequer Contribution Account."

⁵ For a historical account of the origin and growth of State grants-in-aid of local taxation, see vol. i. p. 155 *sqg.* A general view of the grants from year to year will be found in the Annual Report of the Local Government Board.

finances of county authorities were concerned. The idea was, no doubt, to substitute assigned revenues for grants-in-aid; but, unfortunately, it was only half carried out. The revenues "assigned" were still levied and collected by the central government,¹ so that, by the end of the nineteenth century, not only had the cardinal principle of Sir Robert Peel—that grants-in-aid should only be made in return for services efficiently rendered—been lost sight of, but the confusion of the accounts as between the county and the National Exchequers was as bad as ever; and the inequality of the grants as between county and town was more glaring than at any previous period, owing to the operation of the Agricultural Rates Act and Clerical Tithes Acts.²

The revenue which flows annually from the national exchequer into "the exchequer contribution account" of County (and County Borough) Councils comes from three distinct sources—

1. All excise licenses referred to in the Act of 1888 as local taxation licenses, and specified in the First Schedule of the Act. The main part of this revenue is derived from licenses for the sale of alcoholic liquors; but that there are many other kinds of licenses will be seen by a glance at the following list:—

The three forms of
exchequer
contribution:
1. License duties.

Licenses for the sale of intoxicating liquor for consumption on the premises—

Retailers of spirits (publicans).	Retailers of beer and wine.
Retailers of spirits, occasional licenses.	Retailers of cider.
Retailers of beer.	Retailers of wine.
Retailers of beer, occasional licenses.	Retailers of wine, occasional licenses.
	Retailers of sweets.

Licenses for the sale of intoxicating liquor by retail, by persons not licensed to deal therein, for consumption off the premises—

Retailers of beer.	Retailers of wine.
Retailers of beer and wine.	Retailers of sweets.
Retailers of cider.	Retailers of table beer.

Licenses to deal in game.

¹ Sec. 20 (3) and (4) of the Local Government Act 1888 have not been made use of.

² Cf. the chapter on Municipal Finance, vol. i. p. 372 *sqq.*, and the final reports of the Local Taxation Commission.

Licenses for—

Beer dealers.	Carriages.
Spirit dealers.	[Trade carts.]
Sweets dealers.	Locomotives.
Wine dealers.	[Horses and mules.]
Refreshment housekeepers.	Horse dealers.
Dogs.	Armorial bearings.
Killing game.	Male servants.
Guns.	Hawkers.
Appraisers.	House agents.
Auctioneers.	Pawnbrokers.
Tobacco dealers.	Plate dealers. ¹

Duties on the above licenses are collected by the officers of the Inland Revenue, and are paid under regulations prescribed by the Treasury into the Bank of England to what is called the Local Taxation Account. The amount collected in each county is certified by the Commissioners, and is then paid, under the direction of the Local Government Board, out of the Local Taxation Account to the Council of each county.² The total yield of these license duties in 1888 was about £2,900,000. It has now grown to about £3,500,000.

2. Four-fifths of one half of the proceeds of the probate duties, *i.e.* of the estate duties derived from personalty. The probate duties in 1888 were yielding about five and a half millions, and were, like the license duties, a growing revenue.

2. Probate
duties.

The sums due are paid by the Commissioners of Inland Revenue in the manner prescribed by the Treasury to the Local Taxation Account, and out of that account to each County Council under the direction of the Local Government Board. So far, then, the machinery of "the probate grant" is identical with that of the excise licenses grant. But as the probate duties are not a local tax, a new basis of distribution had to be found. That ultimately adopted by the Government was the easiest and perhaps the least equitable. It was determined that the probate grant "shall, until Parliament otherwise determine, be distributed among the several counties in England and Wales

¹ See the First Schedule of the Act of 1888. These are the licenses on which the duties payable are transferred to the County Council under section 20, Local Government Act 1888. To this list should be added licenses for light locomotives under the Locomotives on Highways Act 1896, sec. 8.

² See Local Government Act 1888, sec. 20.

in proportion to the share which the Local Government Board certify to have been received 'during the financial year ending 31st March 1888, out of the grants paid in that year from the Exchequer in aid of local rates.' To elevate the actual (and theoretically indefensible) distribution of State grants in 1888 into a canon for succeeding years was a strange confession of financial ineptitude and a striking testimony to the tyranny exercised in England by established facts over the theories, systems, and principles of weak statesmen and watery parties. It remains to be explained why the probate grant was 'four-fifths of half the yield of the probate duties.'" The explanation is simple. Half the probate duty was assigned by Parliament in 1888 to the relief of local taxation in the United Kingdom. England and Wales received four-fifths of the grant because England, Scotland, and Ireland were believed at that time to be contributing 80, 11, and 9 per cent respectively of the whole public revenue. It may be added that in 1896 another sum was diverted into the Local Taxation Account from the remaining half of the probate duties in 1896. This sum, amounting for England to £1,330,000, was and continues to be paid to all spending authorities (including County Councils) in order to enable them without loss to assess agricultural land within their districts at one half only of its rateable value. The grant received by County Councils from the Local Taxation Account under the Agricultural Rates Act is considerable. The West Riding County Council, for example, received in 1899 £12,300 in respect of its agricultural land.¹

3. The third stream of revenue which runs into the Local Taxation Account, and thence into the Exchequer Contribution Account of County Councils, was set flowing by Mr. Goschen in 1890, when he imposed² the beer and spirit surtaxes—an additional threepence per barrel on beer and sixpence per gallon on spirits—for the further relief³ of local taxation. These "surtaxes" or additional duties were calculated to yield £1,304,000 annually, and England received as before four-fifths of the grant, *i.e.* £1,043,000, of which £300,000 was allocated to police super-

¹ West Riding, Abstract of Accounts for 1899, p. 1.

² Customs and Inland Revenue Act 1890, 53 Vict. c. 8.

³ The beer and spirit surtaxes.

annuation (partly to counties and partly to boroughs), and £743,000¹ in relief of rates, or for technical instruction.²

The complications resulting from the existing financial system will best appear in a concrete illustration from the police grants, which will be given in a later chapter on the work of the Home Office.

It is to be remembered that one of the results of the creation of County Councils and of the substitution of assigned revenues for the old grants-in-aid was that the County Council became not only a receiver but a distributor of grants-in-aid to the various local authorities within the county. A large number of these payments to Guardians in respect of Poor Law schools, to sanitary authorities in respect of medical salaries, to non-county boroughs in respect of police, etc., are specified in the Act of 1888 as sums in substitution for grants out of the Exchequer which the Council of each county is required to pay out of the county fund and charge on the exchequer contribution account.³ The sums for the time being standing to the Exchequer Contribution Account are to be applied in the following order:—

- (1) In paying the costs incurred in respect thereof, or otherwise chargeable thereon; and
- (2) In payment of the sums required by this Act to be paid by the County Council in substitution for local grants; and
- (3) In payment of the grant required by this Act to be made by the County Council in respect of costs of union officers; and

¹ £924,000 in 1900, of which £863,000 was applied to educational purposes.

² See Local Taxation Customs and Excise Act 1890, 53 and 54 Vict. c. 60, sec. 1. The advocates of education maintain—and their contention is strictly in accord with the principle laid down by Sir Robert Peel—that no alternative should have been admitted, but the whole sum devoted to technical education. All the more progressive County Councils adopted this course. The grant is popularly called “whisky money.” Under the Education Act 1902, sec. 2, the County Council and other “local education authorities” are bound to apply “all or as much as they deem necessary” of this money for the promotion of education other than elementary; and “to carry forward for the like purpose any balance thereof which may remain unexpended.”

³ Local Government Act 1888, secs. 24, 25. The provisions of these sections are necessarily somewhat complicated by the fact that for some of the grants certificates were and are required. Thus, if the Home Secretary withheld his certificate of efficiency, the County Council would withhold its grant, and transfer the amount from the Exchequer Contribution Account to the General County Account to be applied to general county purposes.

- (4) In repaying to the general county account of the county fund the costs on account of general county purposes, for which the whole of the area of the county is liable to be assessed to county contributions (sec. 23 (2)).

For the purposes of the Local Government Act of 1888 a county borough is an administrative county of itself,¹ and it was therefore necessary to provide for an adjustment of financial relations between counties and county boroughs. For this purpose the principle to be observed was, "that the county is not to be placed in any worse financial position by reason of the boroughs therein being constituted county boroughs, and that a county borough is not to be placed in a worse financial position than it would have been if it had remained part of the county, and had shared in the division of the sums received by a county in respect of the license duties and the probate duty grant." The same section provides that the adjustment of financial relations between counties and county boroughs (which was necessary in order that the assigned revenues might be divided between the Exchequer Contribution Accounts of a County Council and of a County Borough Council) should be made by agreement between the Councils, or in default of that by commissioners appointed under the Act. There is an ambiguous provision that "in such adjustment regard shall be had to the existing property debts and liabilities (if any) connected with the financial relations of the county and borough," and this unfortunately has been interpreted by the Courts to mean that allowance is to be made for the loss of contributions to the county rate resulting from the separation of a borough from the county.² The adjustment was to provide for future as well as existing expenses. If, however, at any time after the end of five years from the date of an agreement either party can satisfy the Local Government Board that the adjustment has become inequitable, and that a new adjustment can not be agreed upon, then the Board has to appoint an arbitrator to make a new adjustment, which again may be altered in the same way after the end of another period of five years.³

Financial adjustment between counties and county boroughs.

¹ Sec. 31.

² See sec. 32. These provisions are still operative whenever a borough becomes a county borough.

³ Sec. 32 (6).

A county borough, then, cannot in any sense be said to belong to the same taxable area as the county in which it lies. If the county borough has no Commission of Assize or Recorder, it contributes to the cost of county Assizes and county Quarter Sessions. But its revenues are perfectly independent of the county. It has its own rates and its own exchequer contribution account, which is appropriated, like that of a County Council, to various purposes. In the words of the Act, "the mayor, aldermen, and burgesses of each county borough shall . . . be entitled to receive the like sums out of the Local Taxation Account, and be bound to make the like payments in substitution for local grants and the like grants in respect of the costs of the officers of unions and of district schools, as in the case of a county council, so far as the circumstances make such payments applicable." Any surplus remaining over in the exchequer contribution account of a county borough, after payment of the grant to union officers, is to be carried to the borough fund or applied in aid of some rate leviable over the whole of the borough.¹

¹ Sec. 34. The disposal of this surplus is very much simpler than that of a corresponding surplus in the exchequer contribution account of a County Council, sec. 23 (2)-(7). There the first charge on the surplus is a payment to each Quarter Sessions borough which is exempt from contributing to any special county purpose; but these elaborate provisions are of little practical importance, because after the payment of the grants the general county account almost of necessity shows not a surplus but a deficiency, which has to be met out of a county rate. As a good example of County Council finance we may take a summary of the income and expenditure of the County Council of the West Riding of Yorkshire, which appears in the Official Abstract of Accounts (Wakefield, 1899). It is distinguished by its minute classification of accounts. First there is the general county account, including both property and income; then follow details of its most important division—the Exchequer Contribution Account. Next come the special accounts divided into their chief departments—Weights and Measures, Sale of Food and Drugs, Diseases of Animals Acts Accounts; then the account for bridges arranged by wapentakes (as the hundreds are termed in Yorkshire), with the special rate levied for that purpose on the revenue side of the page. The police accounts follow, classified according to the police districts (and the headquarters) into which the police area is divided. On the revenue side is the State grant-in-aid, the police rate levied separately in each district, and the income arising from penalties, fines, etc. Another special item is the police pension fund, with the revenue provided for this purpose by the Act of 1890. This business-like budget suffers from one very remarkable omission. The compiler has not taken the trouble to add up the totals of the general county account, the special county accounts, and the police account. So that a general table of the income and expenditure is wanting.

There was, until 1903, one portion of the *exchequer* contribution account which had not been appropriated by Parliament to specific purposes—the Act, which assigned the beer and spirit surtaxes to local authorities, having expressly provided that County and County Borough Councils *may* apply those revenues to the general purposes of county or municipal government, although they were supposed to spend at least a part of “the beer and whisky money” upon technical education. The Education Act of 1902, however, made the application of this money to higher education compulsory.¹

The creation of this large system of assigned revenues with the county authority as distributing medium has naturally had a profound effect upon local finance. Large as are the amounts contributed by the State, the county rate remains a very important source of revenue; nor is it likely, unless a change comes over the financial policy of the country, that the expenditure of County Councils will fail to keep pace with the growth of assigned revenues. Thus it is expected that the Education Act of 1902 will swell the county rate as well as the grants-in-aid. Meanwhile, too little attention has been paid to the dangers which are likely to arise if electors cease to be ratepayers. It is necessary also to bear in mind that in giving the County Council the duty of distribution Parliament has not given it the duty of control. In passing on the grants to boroughs, poor law authorities, and district councils the County Council is a mere instrument of the Treasury—a mere distributor of money without any power of varying its application. The reason, however, is not recondite. The Legislature considers that most of the branches of administration which receive subventions are of a national rather than a local character, and should therefore be subject to national rather than local control.

We now pass to the last department of County Council finance—its borrowing powers; and here the Legislature shows an even stronger tendency to restrict local autonomy than in the case of municipal loans. By section 69 of the Act of 1888 a County Council may borrow, but only with the consent of the

Borrowing powers
of County
Councils.

¹ See note, p. 96.

Local Government Board, and only such sums as may be required for the following purposes:—

1. For consolidating the debts of the county;
2. For purchasing any land or building any building which the Council are authorised by any Act to purchase or build;
3. For any permanent work or other thing which the County Council are authorised to execute or do, and the cost of which ought, in the opinion of the Local Government Board, to be spread over a term of years; and
4. For making advances (which they are hereby authorised to make) to any persons or bodies of persons, corporate or unincorporate, in aid of the emigration or colonisation of inhabitants of the county, with a guarantee for repayment of such advances from any local authority in the county, or the government of any colony; and
5. For any purpose for which Quarter Sessions or the County Council are authorised by any Act to borrow.¹

A County Council cannot obtain other borrowing powers from Parliament, because, as we have seen, it cannot promote a private Bill. Before giving its consent to a County Council loan the Local Government Board is required to "take into consideration any representation made by any ratepayer or owner of property rated to the county fund." But if the total debt of the County Council (after deducting the amount of any sinking fund) exceeds, or—if the proposed loan is raised—will exceed, one tenth of the annual rateable value of the county, then the mere consent of the Board is insufficient. It is necessary for the County Council to get a provisional order made by the Local Government Board and confirmed by Parliament. Thus the borrowing powers of a County Council are more severely limited than those of a Borough Council. Loans under section 69 of the Act of 1888 (above summarised) are to be repaid within such period, not exceeding thirty years, as the County Council, with the consent of the Local Government Board, may determine. And this policy is continued by the Legislature in the Education Act 1902. As regards the form of these loans, County Councils have plenty of choice. The money may be raised either by one loan or by several, by stock issued under the Act of 1888, by debentures or annuity certificates under the Local Loans Act

¹ *e.g.* For the purchase of allotments, the creation of small holdings, or the building of cottages.

of 1875, or finally, "if special reasons exist for so borrowing," by mortgage under the Public Health Act 1875, secs. 236 and 237.¹

Besides its control over loans, the Local Government Board also exercises a searching control over the ordinary expenditure of County Councils through its officers, the district auditors, whose duty it is to revise and check the accounts of all local authorities except Borough Councils.

Financial and
other control
over County
Councils.

In the words of the Act—

The accounts of a county council, and of the county treasurer and officers of such council, shall be audited by the district auditors appointed by the Local Government Board in like manner as accounts of an urban authority and their officers under sections 247 and 250 of the Public Health Act 1875, and those sections and all enactments amending them or applying to audit by district auditors, including the enactments imposing penalties and providing for the recovery of sums, shall apply in like manner as if, so far as they relate to an audit of the accounts of an urban authority and the officers of such authority, they were herein re-enacted with the necessary modifications; and accordingly all ratepayers and owners of property in the county shall have the like rights, and there shall be the same appeal as in the case of such audit; provided that the First Schedule to the District Auditors' Act 1879 shall be modified in manner described in the Second Schedule to this Act.²

The above section establishes an independent supervision (from which municipal councils are free, except as regards their expenditure on education) over the receipts and expenditure of County Councils. A central audit—that is to say, a revision of local expenditure by a central board, which was first applied to poor law authorities, then to sanitary authorities—was thus extended to county government, and the objection so often and justly levelled against the administration of Quarter Sessions of immunity from financial control was satisfactorily removed. A more complete account of this institution will be given in a later

¹ Cf. Local Government Act 1888, sec. 69 (8); cf. (9) and (10) for other regulations, and also the Orders in Council, 26th Sept. 1891, and 3rd August 1897, which are set out in Macmorran and Dill, p. 763 *sqq.*

² Local Government Act 1888, sec. 71 (3). The work of the auditors is facilitated by sec. 71 (1). "The accounts of the receipts and expenditure of County Councils shall be made up to the end of each local financial year as defined by this Act (sec. 73), and be in the form for the time being prescribed by the Local Government Board."

chapter on Urban District Councils.¹ Our purpose here is to emphasise the theoretical and practical importance of a change which subjects the budgets of county government to the revision and adjudication of a central authority. The control of expenditure and the control of loans enable the Local Government Board to play an active and decisive, though indirect, part in many questions of county government. But practically, although in counties the powers of the Board are so much greater than in boroughs, the same passive policy of non-intervention is pursued. The audit, no doubt, is a real check upon loose expenditure, but it has scarcely ever been used as a lever for interfering in local administration. That the Board should take a direct part in county government is inconceivable. It was not contemplated by the Legislature, and even those powers which might be stretched to cover direct central administration do not really endanger local autonomy,—so strongly adverse is popular sentiment to anything that bears a semblance of bureaucracy, and so susceptible are ministerial departments to public opinion. The reason for having local accounts audited by the Local Government Board was, that the need for a supervision independent of all local influences was strongly felt, and it happened that an independent supervision could be best and most economically secured through the Local Government Board. Both the audit and the “consent” clauses were framed, not to extend departmental rule, but to give financial safeguards to the ratepayers of the county that their representatives will spend their money according to law and with a due regard to the interests of their constituents. Central control over county and district councils does not mean that the central board is empowered to introduce new ideas of its own into local administration. The operations of the Local Government Board are strictly limited, and are only an indirect and secondary element in the work of local government. The English principle that certain laws should be administered by representatives of the people in each locality, acting independently of any central control other than that of Parliament, has been recognised for centuries and still bears

¹ P. 139 *sqq.* and p. 267 *sqq.* on the history of the Local Government Board's Audit.

sway. Only there has been a change of form necessitated by the great increase in the powers and duties of all local authorities. To the direct Parliamentary control there has been added a supplementary or alternative control of ministerial departments responsible to Parliament. When the municipalities were reformed departmental control was still in its infancy. Fifty years later it had been so improved and developed that it naturally impressed itself more firmly upon the reformation of county government. But the government of counties by County Councils, in spite of its financial subordination to a central board, is nevertheless a genuine form of self-government in the true sense of the word.

CHAPTER V

THE RELATIONS OF COUNTY BOROUGHES AND OTHER MUNICIPALITIES TO THE ADMINISTRATIVE COUNTY¹

No description of County Councils would be complete which left out the administrative connection between counties and boroughs. That connection, always important, was brought into marked relief by the legislation of 1888 which created "county boroughs." After the reform of municipal government in 1835 many administrative functions were from time to time assigned by Parliament to local authorities. Those authorities were various. But, generally speaking, the new work was performed in towns by the Borough Council, and in counties, for want of any satisfactory organ of administration, by the Justices. While, however, in some respects their administrative separation was being emphasised, the county benches and the councils of boroughs, more especially of small boroughs, were being drawn together by financial ties. It was not deemed wise to entrust the very small municipalities with the management of their own police, and that function was therefore, as we have previously explained, assigned to the county Justices, the small boroughs being treated for police purposes as part of the county. For other undertakings, such as the erection of hospitals and asylums, co-operation between County and Borough Councils was obviously in many cases desirable, and they were therefore empowered to combine freely in contributions to, and joint management of, certain common undertakings. For other purposes, such as the regu-

¹ Cf. Local Government Act 1888, secs. 5, 31-39; Wright and Hobhouse, p. 24; Blake Odgers, pp. 95-102. Cf. vol. i. pp. 372-417, on the organisation of finance and justice in municipal boroughs.

lation and sanitary supervision of rivers and streams, county and municipal authorities were compelled, and not merely permitted, by law to act together. Thus, while on the one hand the Municipal Corporations Act of 1835 had sensibly relaxed the traditional ties between counties and boroughs, subsequent legislation established new connections and gradually created a new problem requiring statutory solution. That problem finally confronted the reformers of county government in 1888. They had to decide how far, if at all, the new county authority should be made the superior of other local bodies, and in particular of Borough Councils. In the debates of 1888 two points of view were represented—first, that of the corporations, jealous of any interference and eager to resent any encroachment upon their municipal autonomy; second, that of the counties, whose champions were anxious that the richest portions of the county area should not be exempted from contributing to the new county authority. The original plan of the ministry inclined to the second view, and would have given the County Council a superior administrative jurisdiction over the whole county. On the whole, however, as we shall see, the victory lay with the advocates of municipal autonomy.

The Bill of
1888.

Let us now look at the problem as it presented itself to the framers of the Act of 1888. Two broad methods of reform seemed practicable. To take the first would have been to please the county party by subordinating all boroughs within the administrative county, except the very large ones, to the County Council. The second was to yield to municipal opinion and exclude all boroughs of moderate size from the administrative county. At the outset the Government adopted the first plan, and proposed to include all boroughs of less than 100,000 inhabitants in the new administrative county. Parliament, however, preferred the second, and reduced the population limit to 50,000. Consequently, all boroughs of more than 50,000 inhabitants, and one or two of historical pretensions with an even smaller population, were recognised as county boroughs, and exempted from the administration of the County Council. But while excluding all boroughs of a large or moderate size from the authority of the county, Parliament at the same time placed the smaller boroughs,

whose autonomy had been recognised in 1835 rather on historical than on administrative grounds, more definitely within the sphere of county government. Thus a double step was taken in the process of reorganising and unifying the local administration of municipal and county areas—a step the importance of which will be plainer when its consequences have been developed by future legislation to their logical conclusions.

The Act of 1888 has left three main classes of municipal organisation—

Three classes
of boroughs.

1. Municipalities of more than 50,000 inhabitants, denominated "county boroughs."¹
2. Municipalities of from 50,000 to 10,000 inhabitants.
3. Municipalities of less than 10,000 inhabitants.

With certain small exceptions, to be noticed later, the Municipal Code of 1882, and therefore the inner organisation of all these towns, was left untouched by the Act of 1888. Every municipality—small and great—is still governed by mayor, aldermen, and councillors in accordance with the provisions of the Municipal Code, and scarcely any change made in the powers of borough magistrates. What the Act did was to alter in a variety of particulars the functions or province of the Borough Council in each of the three classes. Let us deal with each class separately—

1. The county boroughs.—Since the Act of 1888 the councils of county boroughs have had the rights and duties of County Councils. In the language of the Act each county borough is, "for the purposes of this Act, an administrative county of itself."² The new county functions are added to the old municipal functions. The new province of a county authority has been joined to the

¹ A town does not become a county borough automatically on attaining a population of 50,000, but may be constituted a county borough by order of the Local Government Board; see Local Government Act 1888, sec. 52. At the census of 1901 there were sixty-seven county boroughs, ten of which had then a population of less than 50,000—Bath, Bournemouth, Canterbury, Chester, Dudley, Exeter, Gloucester, Lincoln, Oxford, and Worcester. All had separate commissions of the peace, and forty-eight had their own Courts of Quarter Sessions, cf. vol. i. p. 407 *sqq.*

² Local Government Act 1888, sec. 3. But for all other purposes "a county borough shall continue part of the county (if any) in which it is situate at the passing of these Acts."

old province of a municipal authority. Not that the transference of "the administrative business of the Justices of the Peace"¹ made much difference to county boroughs, for the powers transferred under that expression were for the most part already exercised by the Town Council under the municipal and sanitary codes, or under local Acts, the most important exception being the licensing of theatres, ballrooms, pawnshops, etc. The repair of county bridges and their approaches was also transferred from Quarter Sessions to the county borough councils,² and also the appointment of coroners where the county borough formed a complete coroner's district in itself.³

An important addition to the general powers of county borough councils was made two years later by the Local Taxation (Customs and Excise) Act 1890, which set them up by the side of County Councils as distributors of the "whisky" money.⁴ In so doing Parliament only recognised a *status* which had already in many cases been earned by

praiseworthy activity under private Acts. But the financial aids granted out of the beer and spirit surtaxes have given a great stimulus to technical education. The large towns usually act for themselves; the smaller ones more often combine with one another or with the County Council. In 1902, by the Education Act of that year, which abolished School Boards, the councils of county boroughs, as well as of counties, were made the local authority for all educational purposes. Under the Light Railways Act of 1896 the councils of county boroughs as well as of counties are "authorities," and the powers conferred were speedily made use of, for in 1898 four towns applied for orders to make light railways under the Act. Each county borough is "liable for the maintenance of pauper lunatics in like manner as any other county";⁵ but until and unless some other arrangement is come to, the county borough continues to contribute on the same terms as before to any county lunatic asylum, with power, however, to appoint members to the visiting committee of any such asylum. The financial position of county boroughs has already been explained at considerable length in a previous chapter.⁶ They

Education,
railways, and
asylums.

¹ Sec. 34 (1) (c). ² Sec. 34 (2). ³ Sec. 34 (4). ⁴ Cf. p. 232 n.

⁵ Local Government Act 1888, sec. 32 (3) (d).

⁶ See vol. i. p. 372 sqq.

are, as we have seen, completely relieved from county rates; they are no longer a fiscal subdivision of the county. But they are still liable, at least those which are not counties in themselves, under adjustments and agreements of infinite variety, to contribute to the county fund for a number of common purposes contemplated by Parliament and authorised under public or private Acts. At the same time considerable, though by no means proportionate additions have been made to their funds from the assigned taxes of 1888 and 1890, which flow from the local taxation account into the exchequer contribution accounts of county boroughs. So much for the first or county class of boroughs.

We now turn to non-county boroughs, which have already received separate treatment in chapters on the Municipal Code; we have only to consider here how they have been affected by the creation of County Councils and by the application of the Act of 1888. The second class of municipalities consists of—

2. Boroughs other than county boroughs with a population of upwards of 10,000.—This class is again subdivided into—

- (a) Those with a separate Court of Quarter Sessions;
- (b) Those with a separate Commission of the Peace but no Quarter Sessions;
- (c) Those with neither.

The principle of the Act of 1888 is that all non-county boroughs, whatever their population or dignity, shall form

part of the county for the purposes of the Act of 1888, and that their parishes shall, "subject to the exemptions hereinafter mentioned, be

liable to be assessed to county contributions in like manner as the rest of the county."¹ We have therefore only to find out, as regards the second and third classes of boroughs, with their subdivisions, what "the exemptions hereinafter mentioned are," and how far they preserve the autonomy of the borough or exclude the administration of the county authority.

As regards 2 (a)—

¹The above principle applies to Quarter Sessions boroughs of more than 10,000 inhabitants not being county boroughs, i.e. to non-county boroughs of the highest class, and therefore *a fortiori* to all non-county boroughs.

Quarter Sessions boroughs are not liable to be assessed by the County Councils to county contributions towards the cost of county Quarter Sessions if they were exempt from such contribution before the Act of 1888. But this exemption does not extend to any costs incurred in respect of any functions, previously exercised by Justices of the borough, which were transferred by the Act of 1888 to the County Council, nor to any costs of, or incidental to, the assizes of the county. Further, the main roads within these boroughs are a formal part of the county, and are to be maintained out of the county fund; and the expenditure upon them is a general county purpose, for which the parishes of the borough may be assessed to county contributions.* Nevertheless, the borough is to be deemed an urban sanitary authority within the meaning of the Highways and Locomotives Act 1878, and may continue to repair and maintain any main road, and has power to make bye-laws for main roads as well as other roads within the borough; though if any difference is made by such bye-laws between any main road and any other road, such bye-laws require the approval of the County Council. It would of course be an advantage to a borough to throw the expenses of maintaining its roads upon the whole county; and the Borough Council was allowed, within two years after the passing of the Act of 1888, to apply to the County Council to declare any roads within the borough to be main roads. If the County Council refused (preferring, as it well might, to relinquish an almost nominal power which would involve a real financial loss to the county ratepayers), the Borough Council might appeal to the Local Government Board. Lastly, county councillors are elected for boroughs of this class, but they may not act or vote on the County Council upon matters involving expenditure to which their constituents are not liable to contribute equally with the rest of the county ratepayers.¹

Main roads in
these boroughs.

It should be observed, however, that any grant of a Court of Quarter Sessions made to a non-county borough after 1888 is not to affect the powers, duties, or liabilities of the County Council within the area of the borough, nor to exempt the

¹ The above summary is taken from sec. 35 of the Act of 1888, where the status of this class of boroughs is set out at great length.

borough from any assessment to county contributions. For the second subdivision of the second class there is no special provision made by the Act of 1888. But section 36 applied to both, 2 (a) and 2 (b), *i.e.* to a non-county borough with a separate Commission of the Peace, whether it is a Quarter Sessions borough or not.¹ As regards these boroughs—

- (1) Subject to the provisions of this Act, all such powers, duties, and liabilities of the Court of Quarter Sessions or Justices of the borough, as in the case of the county are by this Act transferred to the County Council, shall cease, and the County Council shall have those powers, duties, and liabilities within the area of the borough in like manner as in the rest of the county.
- (2) Provided that such powers, duties, or liabilities, so far as they are under the Acts relating to pauper lunatics, shall, save as otherwise provided by this Act, be transferred to the council of the borough and not to the County Council; and the provisions of this Act with respect to the transfer to a County Council shall apply, with the necessary modifications, to such transfer to the council of the borough.

The third subdivision (c) of the second class,—namely, boroughs of more than 10,000 inhabitants, with neither a Borough Bench nor a separate Court of Quarter Sessions,—are all “local education authorities” for purposes of elementary education under the Education Act 1902. They are not specifically referred to in the County Councils Act. Their *status*, however, may be roughly indicated by observing that their self-government under the municipal and public health codes is practically unimpaired, though they are formally placed within the administrative area and authority of the County Council. It may be accurately ascertained, on the one hand, by deducting the privileges granted to the two superior subdivisions of the second class, and on the other hand by remembering that their population saves them from the fate of the smaller boroughs of the third class, upon whose autonomy the County Councils have made substantial inroads, while at the same time they enjoy all the privileges accorded to these smaller boroughs. To this third class of smaller boroughs we now advert.

¹ We believe that in fact all Quarter Sessions boroughs have separate Commissions of the Peace.

3. Boroughs with a population of less than 10,000 inhabitants, according to the census of 1881—(a) with a separate Court of Quarter Sessions; (b) without a separate Court of Quarter Sessions.

First of all, the Legislature has deprived this whole class of smaller boroughs of the power to raise and maintain a separate police force. In 1888 one of these boroughs had a separate force consisting of one constable.¹ Now they are all policed by the statutory Joint-Committee of County Councillors and County Justices, and the Watch Committee, being left with nothing to do, disappears. The County Council also supersedes the Borough Council as the authority for appointing analysts under the Sale of Food and Drugs Acts, and for the execution of the Acts relating to contagious diseases² and destructive insects, weights and measures, gas meters and explosives.

Boroughs of less than 10,000 inhabitants.

The first subdivision of the third class consists of Quarter Sessions boroughs which had a population of less than 10,000 at the census of 1881. Before 1888 these boroughs enjoyed certain powers as regards pauper lunatic asylums, coroners, the appointment of analysts, reformatory and industrial schools, and fish conservancy. These powers are transferred to the County Councils. But the transfers are

(1) Subject to the provisions of the Act for the protection of existing officers and the continuance of existing contracts; and

(2) Do not, save as respects the coroners, affect the powers, duties, and liabilities of the council of the borough under the Municipal Corporations Act 1882.³

For highway purposes these boroughs are urban sanitary districts. They may apply, like the larger boroughs, for a declaration that roads within the borough are main roads, and so maintainable at the expense of the county. Boroughs of this class are worse off financially if they possess Quarter

Discouragement of independent justice in small boroughs.

¹ Wright and Hobhouse, p. 25. No new borough with less than 20,000 inhabitants has been allowed a separate police force since 1877.

² Under the Diseases of Animals Act 1894, the local authorities to execute the Act are Borough Councils in boroughs of more than 10,000 inhabitants and County Councils (57 and 58 Vict. c. 57, sec. 3, read with the Local Government Act 1888, sec. 39).

³ Local Government Act 1888, sec. 38.

Sessions and a Borough Bench than if they do not, as will be clear from the following provision:—

The area of the borough shall for the purposes of the above-mentioned Acts, and all other administrative purposes of the county council, be included in the county, as if the borough had not a separate court of quarter sessions, and accordingly shall be subject to the authority of the county council and the county coroners, and may be annexed by the county council to a coroner's district of the county, and the parishes in the borough shall be liable to be assessed to all county contributions.¹

Thus a borough of less than 10,000 inhabitants, with both a Borough Bench and its own Court of Quarter Sessions, must pay its own recorder, clerk of the peace, clerk to the borough Justices, etc., and also contribute to the expenses of county justice. The object of this intentional unfairness is to drive these small Borough Councils to petition the Crown to revoke by order in council the grant of a borough court of Quarter Sessions, and by letters-patent to revoke the grant of a commission of the peace. In short, the object of the Act is to reduce all boroughs of less than 10,000 inhabitants to the status of urban district councils, leaving them only their mayor and aldermen, their independence of a central audit, and some slight superiority of constitutional dignity.

By the Local Government Act of 1894, however, some compensation was made to the smaller boroughs for the loss of power which they had suffered by the Act of 1888. In spite of the transference of administrative business from Justices of the Peace acting in and out of Quarter Sessions, a good deal of administrative work remained untransferred which, for various reasons, had been transacted by Justices under judicial forms. Until 1894, for example, the licensing of gang masters, the grant of pawn-brokers' certificates, the licensing of dealers in game, the grant of licenses for passage brokers and emigrant runners, the power to abolish fairs or alter fair days, and the execution of the Acts relating to petroleum and the protection of infant life, were all functions exercised by Justices of the Peace out of Quarter Sessions, and all these were transferred by section 27 of the Act of 1894 to borough and district

Compensations
to small boroughs
by the Act
of 1894.

reasons, had been transacted by Justices under judicial forms. Until 1894, for example, the licensing of gang masters, the grant of pawn-brokers' certificates, the licensing of dealers in

¹ Local Government Act 1888, sec. 38 (5).

councils irrespective of their population or dignity. At the same time the licensing of knackers' yards, a function previously exercised by Quarter Sessions, was transferred to all borough and district councils. The most important, however, of all licensing functions still remains in the hands of the magistrates—the grant and renewal of licenses for the sale of alcoholic liquors; and this anomaly, as we have observed, is aggravated in the case of Quarter Sessions boroughs, whether county boroughs or not, by the provision that all appeals from the decisions of the borough bench must go, not to the borough Recorder, but to the Quarter Sessions for the county.

We have now examined the administrative relations between boroughs and counties with sufficient minuteness, to show that they cannot be expressed by any simple formula or definite principle. This broad distinction stands, however, between county boroughs and non-county boroughs,—that whereas the former are excepted from, the latter are included in, the administrative county. County boroughs and County Councils are equivalent units in the English system of local government. Non-county boroughs are ranged, as we have seen, in various degrees of subordination to the council of the administrative county of which they form a part. The larger ones practically preserve their municipal autonomy in spite of a formal and theoretical subordination; the smaller ones are reduced to a position scarcely distinguishable from that of an urban district council, whose powers and duties will be described in the succeeding chapter of this work. As has already been observed, the original idea of the Unionist Government which came into power in 1886 was to make the County Council an intermediate court of administration—a half-way house between local and central government. In the Act of 1888 this idea was only carried out in a very tentative and half-hearted manner. Its application to municipalities was restricted to those of less than 50,000 inhabitants, and its application to the Local Government Board was almost entirely dependent upon the pleasure of the Board itself. Experience has shown that no department of government will, of its own accord, divest itself of any power, however petty or

Difficulty of
generalising on
the relations
between counties
and boroughs.

minute.¹ A more important application of the principle of devolution is contained in the Education Act of 1902, which confers on the councils of counties and county boroughs considerable powers (previously monopolised by the Board of Education) of inspection over education. In 1889, and again in 1898, thorough inquiries were instituted with a view to relieving the notorious congestion of the Local Government Board, which was quite unable to cope with the work imposed upon it by Parliament. Owing to a disagreement between the County and Borough Councils, the Local Government Board was able to tide over the crisis, and obtained an increase of its staff in lieu of that decentralisation of its minor powers to county authorities which, in the opinion of those best qualified to judge, is so eminently desirable.² At the same time these inquiries seem to show that, even if the reluctance of the Board were overcome, any scheme for establishing a centralised administration of local government in each county would meet with an insuperable barrier in the strong and well-grounded repugnance of the

¹ The President of the Local Government Board has been more than once called upon to decide whether paupers in a particular workhouse shall have treacle to their suet puddings or not.

² In 1898 a departmental committee of the Local Government Board was appointed to inquire into a report upon a proposal for the devolution of powers. Representatives of the Board, of the Municipal Corporations Association, and of the County Councils Association, appeared before the Committee. The last-named Association urged that important intermediate powers should be given to County Councils. Administration, they thought, would be improved, and the congestion of the Local Government Board relieved, if certain duties of sanitary control and inspection were transferred from the Board to the County Councils. They also proposed that County Councils should be given power to authorise loans up to £5000 to non-county boroughs and towns. They were met by the opposition of the representatives of the Municipal Corporations Association, who insisted that an elective body like a County Council was not sufficiently impartial to take the place of the central authority. The towns, they said, would prefer to keep in touch with the Local Government Board, whose expert advice was highly prized. Moreover, County Councils were almost entirely dominated by agricultural interests, and had no sufficient acquaintance with the special conditions and needs of towns. They had quite enough already of central control, but if Parliament decided that more "grandmotherly administration" were necessary, let the "grandmother" in London take up a residence in each county. Decentralisation was most desirable, but it could only be accomplished satisfactorily by increasing the powers of boroughs—the most experienced and efficient of all local authorities. See Minutes of Evidence and Report of L.G.B. Inquiry Committee, 1898 (P.P.C. 8999).

municipalities. There again abstract theory must yield to knowledge and experience. Urban and rural administration cannot be fused. A system which is condemned by logic may be approved by experience. The reformer need not disdain a picture, so common in the constitutional history of England, of two independent organisations working smoothly side by side, and of old traditions mixing well with new ideas of organisation.¹

¹ The relations of a county borough to a county presents an external resemblance to those of a *Stadtkreis* to the other *Kreise* of a Prussian province. But it must be remembered that in essentials the relationship between Prussian towns, *Kreise* (districts), and provinces is utterly different from that of their English parallels. An interesting comparison between these English and Prussian institutions as they stood a generation ago will be found in Morier's monograph *Selbstregierung, Die deutsche Gemeindeverwaltung auf Grundlage der preussischen Kreisordnung im Vergleich zum Englische Self-Government*, Leipzig, 1876. It is, however, coloured by Gneist's ideas, and was composed for governmental purposes.

PART III

URBAN AND RURAL DISTRICT COUNCILS

INTRODUCTION

THE gigantic growth of town life in England during the nineteenth century was accompanied by a corresponding growth in the forms of town government, beginning with the Municipal Corporations Act of 1835. That Act revived the old idea of a local self-governing community which had been dead or moribund for many generations. But the new code of local government was, as we have seen, restricted in its scope and application. It was only a beginning; for, on the one hand, the sphere of activity assigned to each municipal council was very narrow, and required extension to meet the rising standards and growing needs of municipal society; and, on the other hand, populous places were springing up in all directions which were not considered important enough to deserve the dignity of incorporation and the grant of full municipal autonomy, and yet had no adequate form of organisation, because Parliament had made no provision for that purpose. Meanwhile the old machinery of the parish, long rusty, had been discarded for Poor Law purposes; and the creation of Unions and Boards of Guardians had reduced the activity and aggravated the inefficiency of parochial organisation. Accordingly, from that time forward no serious attempt was made to give vestries a share in the new public work, which, in response to new public needs, was being piled year after year upon the backs of other local bodies. Naturally, therefore, the need for a new organisation was felt most severely in those non-municipal districts where population was densest. When at length a general code of public health was enacted for the

whole country, this need could no longer be left unsatisfied, and the application of sanitary law to populous districts was accompanied by the creation of local boards or commissioners for the purpose of carrying it out. The stages of the evolution by which the Borough Council has become the sanitary authority, and the sanitary authority in non-municipal districts has acquired other powers, have been described in the historical portion of this work. The second part of the process was completed for the time being by the creation of district councils in 1894. These councils fall into two classes, urban and rural, according to the character of their areas. We shall now describe them, beginning with that which stands first in the order of history as well as in the complexity of its functions and the volume of its activities.

CHAPTER I

URBAN DISTRICTS AND URBAN DISTRICT COUNCILS ¹

“URBAN district” may be used in either a wider or a narrower sense. If in the wider sense, the term applies to the area of any authority other than a rural authority which is entrusted with the administration of public health. The term therefore covers—

1. Municipal boroughs.

2. Urban districts in the narrower sense, *i.e.* districts governed by urban district councils.

With one exception Borough Councils are, as we have seen, urban sanitary authorities, and their districts urban sanitary districts. In the municipal borough the Legislature found a mature and perfected organisation possessed of such elasticity that it was capable, without undergoing any structural changes, of undertaking the sanitary work which has made so vast an

¹ *Literature.*—Wright and Hobhouse, p. 17; Blake Odgers, p. 129 *sqq.*; Jenks, p. 99 *sqq.*; Arminjon, 83 *sqq.*; Vauthier, pp. 321-342; Thackeray Bunce, Municipal Boroughs and Urban Districts in *Cobden Club Essays*, 1882, p. 271 *sqq.* The more important statutory provisions are: (1) Public Health Act 1875, Part II., secs. 5-8, 10, 12; Part V., 173-189, 192-200, 203-206; Part VI., 207-228, 247; Parts VII. and VIII., *passim*. (2) Local Government Act 1894, Part II. and Part IV., secs. 51-59 (there are good editions of the Act of 1894 by Macmorran and Dill, and Jenkins); see also Schedule II. of the Public Health Act 1875 and the Order regarding elections, issued by the Local Government Board, 1st January 1898 (Glen's *Law of Public Health*, vol. ii. p. 1923 *sqq.*). The thirteenth annual report of the Local Government Board 1900-1901 shows that at the end of the year 1898-99 there were in England and Wales 64 county boroughs, 244 non-county boroughs, and 800 other urban districts. For a short statistical survey of urban district councils year by year see the *Municipal Year-Book*. The “Standing Orders and Regulations” of urban district councils and various newspaper reports have also been consulted for this chapter.

extension in the sphere of municipal activity. These municipal urban districts have, however, been already described and do not concern us here.

We pass to urban districts properly so called. These may be divided historically into two groups—

1. Improvement Act Districts, which, before the Local Government Act of 1894, were governed by Improvement Commissioners appointed under a local Act. Thirty-four of these anomalous areas—all created before the Public Health Act of 1875—remained in 1894. But they are now all governed by borough or district councils.

2. Local Board Districts, *i.e.* areas other than boroughs constituted as urban sanitary districts by order of the Local Government Board under a general Act of Parliament either permissive, like the Public Health Acts of 1848 and 1858, or obligatory, like the Sanitary Code of 1875. Some local board districts having been united under joint boards, there appear to have been in 1891 682 local boards and 33 joint boards in England and Wales.¹

All differences, however, between these two kinds of urban sanitary districts were swept away by the Act of 1894. Each is now called an urban district, and is governed by an urban district council.² Their number, all told, amounted at the beginning of 1899 to precisely 800.³ The increase is accounted for by the number of populous rural districts or parts of rural districts which have been converted, and would have been still larger, had not the process of converting urban sanitary districts into municipal boroughs been going on at the same time. Nearly all large towns have from time to time absorbed outgrowths which were at first governed by Local Boards, Commissioners, or—since 1894—by Urban District Councils. In Huddersfield, for example, Lindley, Newsome, Deighton, Moldgreen, and Fartown, all of which were once

¹ Cf. Jenks, p. 103.

² Local Government Act 1894, sec. 21. (1) "Urban sanitary authorities shall be called urban district councils, and their districts shall be called urban districts." Urban districts therefore are merely the old urban sanitary districts renamed.

³ See *Annual Report of Local Government Board, 1900-1901*, p. 675. In 1901 there were 806, of which 184 had less than 300 inhabitants, 395 from 3000 to 10,000, and 166 from 10,000 to 20,000.

districts under Local Boards, have been one by one incorporated in the county borough during the last half century.

As an urban district under the Act of 1894 is the old urban sanitary district renamed, so the Act provides for the identity of the old and the new authority—

The change of name of an urban sanitary authority shall not affect their identity as a corporate body or derogate from their powers, and any enactment in any Act whether public, general, or local and personal, referring to the members of such authority shall, unless inconsistent with this Act, continue to refer to the members of such authority under its new name.¹

But the change from Sanitary Boards to District Councils is not a mere change of name. There has also been an

important change of constitution; for the urban district council, unlike the authorities which it displaces, has a purely democratic constitution.

Constitution of urban councils.

As might be expected, it follows in its main features the municipal pattern. Every urban district council is "a corporate body"² or "body corporate."³ An urban district councillor is elected for three years by all the parochial electors of his district, or, if his district is divided into wards, by all the parochial electors of his ward. "Parochial electors" are defined as "the persons registered in such portion either of the local government register of electors or of the Parliamentary register of electors as relates to the parish."⁴ The Act provides that "the local government register of electors and the Parliamentary register of electors, so far as they relate to a parish, shall, together, form the register of the parochial electors of the parish." Neither sex nor marriage is a disqualification, though husband and wife may not be qualified in respect of the same property. All persons, male and female, who are so registered are entitled to vote. Each elector may give one vote and no more for each of any number of candidates not exceeding the number entitled to be elected.⁵ Consequently the councils of urban

¹ Local Government Act 1894, sec. 85 (5).

² Local Government Act 1894, sec. 85 (5), above quoted.

³ Public Health Act 1875, sec. 7, under which "every local board, and any improvement commissioners being an urban authority and not otherwise incorporated, shall continue to be or be a body corporate."

⁴ Local Government Act 1894, sec. 2.

⁵ Local Government Act 1894, sec. 23 (4).

districts (as well as of rural districts and parishes) are elected under the most democratic franchise known to English law.

The voting is by ballot. There are no aldermen, and there are no *ex-officio* or nominated members. The election is conducted according to rules framed under the Act of 1894 by the Local Government Board. The term of office of an urban district councillor is three years; and one-third, as nearly as may be, of the council—and if the district is divided into wards, one-third, as nearly as may be, of the councillors for each ward—go out of office on 15th April in each year. There is, however, an interesting provision which enables a County Council, “on request made by a resolution of an urban district council, passed by two-thirds of the members voting on the resolution,” to direct that the members of the council concerned shall retire together every third year. In other words, an urban district council may, if it wishes, and the County Council consents, substitute a triennial election of the whole body for an annual election of one-third. In a number of urban districts the triennial plan has already been adopted.

The size of a council varies with the size of the district; but at least one councillor must be elected to represent each constituent parish with a population of not less than 300. Practically any resident in the district, of either sex, may be elected an urban district councillor.

A person shall not be qualified to be elected or to be a councillor unless he is a parochial elector of some parish within the district, or has during the whole of the twelve months preceding the election resided in the district, and no person shall be disqualified by sex or marriage for being elected or being a councillor.¹

In the absence of any property qualification for the office of district councillor we have one of the principal constitutional differences between the government of urban districts and boroughs.² No special qualification is pre-

¹ Local Government Act 1894, sec. 23 (2).

² The new London boroughs are municipal in form, but many of the substantial powers of an urban authority are wielded by the London County Council. In the debates on the London Government Act 1899 an amendment was carried in the House of Commons to make women eligible to serve on the borough councils, as they had been eligible to serve on the old vestries, and are so now on urban district councils. But the amendment was thrown out by the House of Lords (cf. London Government Act 1899, sec. 3).

scribed for the chairmanship of an urban district council. Any councillor of either sex may be chairman. But if the choice fall upon a woman, the council loses the privilege of electing at the same time a Justice of the Peace for the county.¹

Besides the Ballot Act, the law of corrupt practices at municipal elections (which has been previously described²) is applied to local government elections by the Act of 1894. The procedure and conduct of elections is provided for by section 48 of that Act, and further regulated, as we have said, by rules of the Local Government Board. A candidate must be nominated in writing. If an infant, or an alien, or a person who has received poor-relief within the previous twelve months, or within the previous five years has been convicted either on indictment or summarily of any crime, or has been adjudged bankrupt or has compounded with his creditors, he is disqualified for election. Nor may a district councillor hold any paid office under the district council; nor finally may he be "concerned in any bargain or contract entered into with the council or board, or participate in the profit of any such bargain or contract, or of any work done under the authority of the council or board." Lest, however, the choice of the electors should be unduly restricted, three exceptions to this last disqualification are admitted. No person is disqualified by reason of being interested—

- (a) In the sale or lease of any lands, or in any loan of money to the council or board, or in any contract with the council for the supply from land in his ownership or occupation of stone and other materials for roads and bridges.³

¹ Local Government Act 1894, sec. 22. The chairman of a district council, unless a woman, or personally disqualified by any Act, shall be by virtue of his office Justice of the Peace for the county in which the district is situate.

² In vol. i. pp. 291-301.

³ Both urban and rural district councils may compel landowners in the district to sell land for statutory purposes under the somewhat elaborate machinery provided by the Lands Clauses Consolidation Acts, and the Lands Clauses (Umpire) Act 1883. The first step to be taken is to obtain a provisional order, the next is to serve a notice to treat on every person interested in the land which the council proposes to purchase (cf. Public Health Act 1875, sec. 176). Simpler and less expensive methods apply in the case of allotments, light railways, housing, etc.

- (b) In any newspaper in which the council inserts advertisements.
- (c) In any contract with the council or board as a shareholder in any joint-stock company.¹

An urban district council's sphere of activity is defined and limited by the statutory functions which it is obliged or empowered to exercise. What we have said of the municipalities applies therefore to the latest form of urban organisation. No general or theoretical definition of its purpose and its province is possible. There is no opening here for metaphysical jurisprudence. No essential purpose, no definite type, underlies the various and dissimilar operations which an urban district council may legally perform. Its sphere of activity can only be defined as the sum of its general powers amplified in individual cases by adoptive and private Acts. Here it is only necessary to describe the general law, the statutory minimum of power, which is or may be exercised by the inhabitants of every urban district through their representative council. This task is made the shorter and easier because, the powers of the municipality, which are practically coextensive, have already been ascertained.

Urban sanitary authorities were first created for the administration of the sanitary laws; and this is still the principal function of the modern urban district council. Sanitary work, which merely extended the original sphere of a municipal borough, made up the whole original purpose and province of an urban sanitary board. In its beginning, therefore, what is now the only non-municipal urban authority for general purposes was an *ad hoc* body elected for the sole purpose of public health. But with such amazing rapidity was the conception of public health broadened and deepened, that a long series of additional functions soon attached to the new body and made it a real local organ for the execution of the general laws of administration. The Public Health Act of 1875 and the statutes by which it has been supplemented and amended have already been described in our historical and

¹ Local Government Act, 1894, sec. 46. A directorship in such a company would be a disqualification. It is unfortunate that the Act does not distinguish between large and small holdings in these companies.

municipal chapters.¹ As "urban sanitary authority" under these Acts an urban district council has the same powers and duties as a Borough Council with regard to drainage, water supply, nuisances, lodging-houses, infectious diseases, roads, lighting, the regulation of traffic, and so on. Under the Education Act of 1902, all urban district councils of more than 20,000 inhabitants are local education authorities for purposes of elementary education, and are bound to maintain and keep efficient all public elementary schools within their areas. Also, for purposes of higher education, any urban district council of whatever size may spend a penny rate. In a chapter on County Councils we have already seen how an urban district council may take over the main roads within its district, and we have also mentioned certain administrative powers which, by the Act of 1894, are transferred to urban district councils from Justices of the Peace. It may be observed with regard to the adoptive portions² of the Public Health Act that urban district councils have shown at least as much enterprise and spirit as the smaller borough councils. But the volume and character of public work varies as much in urban districts as in municipal boroughs, so widely do urban districts differ in size, population, and industrial conditions. Many are small market towns, mere retailers of agricultural produce. Their sleepy councils usually reflect a slow and conservative constituency. The manufacturing and mining districts of the Midlands and North, on the other hand, often inspire these popular bodies with extraordinary vigour. In Lancashire and Yorkshire, for example, urban districts were created with startling rapidity during the second half of the nineteenth century. In 1894 Lancashire had 93, and the West Riding of Yorkshire 122. Of these 215, 60 had less than 3500, and 13 less than 1000 inhabitants.³ In 1901

Diversity of
character.

¹ Cf. vol. i. pp. 154 and 358-362.

² E.g. in establishing and erecting wash-houses, baths, gymnasiums, free libraries, hospitals, technical schools, markets, and in laying out light railways, parks, or open spaces. For proofs of their activity, cf. the *Municipal Year-Book*, and the periodical reports given in the *Municipal Journal* and similar publications.

³ Cf. Wright and Hobhouse, p. 19, who infer that many urban districts are therefore rural in character. But the true inference is that the small compact mining and industrial villages of the North are eager to have the maximum powers of self-government which the laws allow.

the number in Lancashire was 98, and in the West Riding of Yorkshire 117, several urban districts having secured in the interval charters of incorporation. Apart from the access of dignity and the guarantee which a charter affords against absorption by some larger boroughs, there is no reason why the inhabitants of an urban district should aspire to a municipal status which would scarcely add substantially to their powers; and we find, indeed, at least two places, Willesden in Middlesex and Rhondda in Glamorgan, with populations of over 100,000 apiece,—twice the number requisite for a county borough,—which have hitherto preferred to retain the more democratic, if less ornamental, constitution of an urban district.

Facts like these help us to form some idea of the wonderful elasticity of urban institutions in England, which seem to adapt themselves readily to all the conditions and demands of town life. And wherever the general law is insufficient, urban communities may resort to Private Bills or Provisional Orders to satisfy any peculiar need for which Parliament has not provided in the statutes at large.

Richly, however, as an urban district is endowed with the powers of self-government, it lacks one important function which ordinarily belongs to boroughs. In municipal boroughs of a normal type order is preserved by the borough police; and the borough police are managed by the Watch Committee of the Borough Council. But an urban district has no police force of its own. It is served by the county police, over which the urban district council has no control. In this respect every urban district council stands in the same position as that in which the smaller Borough Councils were placed by the Act of 1888. Another distinction between an urban district and a borough of the normal type appears in the organisation of justice. Like many small municipalities urban districts have no separate Commission of the Peace. Justice is meted out by the County Bench, upon which, however, their chairman, if a man, occupies a place. Moreover, urban districts with more than 25,000 inhabitants are entitled, like boroughs, to a stipendiary magistrate.¹ But there is not as yet any instance of

Police and
magistrates.

¹ Under the Stipendiary Magistrates Act 1863 (26 and 27 Vict. c. 97, secs. 3, 4). Certain licensing and police functions have been transferred from Justices of the

an urban district having availed itself of a privilege which, however advantageous it might be, would involve expenditure out of the rates. For that reason, if the appointment of stipendiaries is desirable, their salaries might properly be charged wholly or in part on the imperial exchequer.

Like every borough council every district council may take the initiative for the purpose of extending the sphere of its work beyond the limits assigned by Parliament.

Extensions of
activity.

And this in two ways. In the first place it may apply to the Local Government Board or the Board of Trade, as the case may be, for the grant of administrative powers under the Acts relating to public health, gas, tramways, etc. It is by provisional order of the Local Government Board, obtained, it will be remembered, under the Local Government Acts, or by a private Act, that a borough extends its boundaries. But an urban district is created or extended by order of the County Council, confirmed by the Local Government Board under section 57 of the Local Act 1888, and section 54 of the Local Government Act 1894.

In the second place an urban district council may promote a private Bill, and so approach Parliament directly. This method is usually much more expensive; and it is understood that Parliament will not entertain a private Bill unless some of the powers sought are not obtainable by provisional order. The Borough Funds Act of 1872 enables, under certain conditions, any "governing body" (which expression includes urban district councils as well as borough councils) to promote or oppose local Bills in Parliament, as well as to prosecute or defend legal proceedings in the interest of the inhabitants of the district, and to defray the Parliamentary or legal costs of so doing out of their funds. That Act, however, does not diminish rights already existing at common law; and there is no doubt that any local authority, from a County Council to a Parish Council, possesses the ordinary power of trustees to defend its property and rights, even though that involve the opposing of a private Bill in Parlia-

Peace to all urban authorities (both borough and district councils) under the Local Government Act of 1894, sec. 27.

ment, and to defray out of its own funds the necessary costs of so doing.¹

Another power possessed by all urban district councils in common with all borough councils is that of issuing bye-laws and regulations under the Public Health and other Acts. But this power of "self-legislation" is considerably less in an urban district than in a borough with its own police, and less even than in a borough without a police force of its own, because a district council is not allowed to make general bye-laws "for the good government" of the town. All bye-laws passed by a district council are inoperative until confirmed by a central department.²

Like all local authorities, urban district councils may frame rules, usually called Standing Orders, for the regulation of its own proceedings and those of its committees;³ and they may also make "regulations with respect to the duties and conduct" of their officers and servants.⁴ An examination of the bye-laws, standing orders, and regulations passed by a number of urban district councils confirms the impression produced by a comparison of their legal powers with those of municipal boroughs, that there is but little material difference, apart from the distinctions already pointed out, in structure and working between the two types of urban organisation. Granted two towns of similar size and conditions, one with a municipal, the other with an urban district council, there is no ground (if we exclude police matters) for supposing that the former will exercise more functions or possess better administrative machinery than the other.⁵

¹ Cf. vol. i. p. 364 *sqq.*; vol. ii. p. 70; also Attorney-General *v.* Mayor of Brecon (1878), 10 Ch. D. 204; R. *v.* White (1884), 14 Q.B.D. 358. But cf. also the Leith case 1899, A.C. 508, and Attorney-General *v.* Rickmansworth Urban District Council (1902), 66 J.P. 410.

² Usually the Local Government Board.

³ Cf. Public Health Act 1875, Sched. I. Rule 1.

⁴ See Public Health Act 1875, sec. 189, on the officers and servants of urban authorities.

⁵ A collection of urban district year-books and newspaper cuttings is in the library of the London School of Economics. We may take Hornsey (Middlesex) to illustrate the organisation and activity of a large urban district council in the neighbourhood of London. Hornsey contains some 80,000 inhabitants, and its rateable value exceeds half a million. The area of the district is 2874 acres, less than a quarter the area of the county borough of Huddersfield (12,154), which has a population only slightly larger. The urban district of Hornsey therefore is four times more densely populated than the borough of Huddersfield. Yet its

The inner organisation of this form of urban government is an almost exact model of the older municipal type which

council declines to apply for a charter of incorporation. The following account, taken from the *Municipal Year-Book*, will help to explain this indifference:—

"The Council has recently obtained powers of appointment of overseers and assistant overseers of the parish, and various powers, duties, and liabilities of a parish council, vestry, etc. The Council appoints its own members as overseers, and (as to five-sixths of parish) collectors of general district rate are assistant overseers, thus bringing about collection of that rate and the poor rate together by the same collectors, one demand note, one receipt and one rate-book being used for the two rates. The Infectious Diseases (Notification) Act, 1889; the Infectious Diseases Prevention Act 1890; the Public Health Acts Amendment Act 1890, Parts II., III., and V.; the Museums Act 1891; the Public Baths, etc. Acts; the Housing of the Working Classes Act 1890, Part III.; and the Public Libraries Act 1892, have been adopted. A local Act, including an Order for the electric lighting of Hornsey, received royal assent on 1st July 1898. The district contains Finsbury Park (120 acres), Queen's Wood (52 acres), Highgate Gravelpit Wood (69 acres), Middle Lane Pleasure Grounds (8 acres), and Hornsey Public Gardens (about 2 acres), and on the north adjoins the Alexandra Park (130 acres), and on the south Waterlow Park (20 acres). The district is served by the Great Northern Railway, with stations at Finsbury Park, Harringay, Hornsey, Stroud Green, Crouch End, Highgate, and Muswell Hill; the Highgate Hill Cable Tramway connects Highgate with Islington, while another tram line runs along Seven Sisters Road. There are several omnibus services through the district. A museum of sanitary appliances has been open at Highgate for eight years. There is an efficient paid fire-brigade, with a central and three branch stations. A system of fire-alarm posts and wires has been established. The New River Company supplies the water, with a constant supply in the greater part of the district. The district, under the Hornsey Local Board Act 1871, drains into the Metropolitan Northern High Level Sewer, except as to 300 acres of Muswell Hill Ward, for which precipitation works are in use. Many high ventilating columns have been put up against walls of houses, and the surface gratings closed. The house refuse is collected weekly and burnt in furnaces at the Hornsey depôt. There is a highways depôt at Highgate, and one for the eastern half of the district is about to be provided on a site secured near Harringay Station. There are a coroner's court, mortuary, and apparatus for disinfecting clothing, etc., at the Hornsey depôt. There is in Muswell Hill Ward a large isolation hospital for fever, diphtheria, and typhoid cases, with a competent staff of nurses. Allotments for the labouring population have been provided at Hornsey (7 acres), Highgate (8½ acres), and Muswell Hill (5 acres). One hundred and eight dwellings for the working classes have been erected at Hornsey, and thirty-six cottages and twelve double tenements are about to be erected at Highgate. A site for public baths has been secured. A central library has been opened at Hornsey, furnished with 14,000 volumes, and sites for branch libraries have been secured at Stroud Green, Highgate, and Muswell Hill. The Lord Chancellor opened the central library in October 1899. A site for a technical institute has been offered. The Northern Central Hospital (in Islington) is partly supported by and serves Hornsey residents. The death-rate of Hornsey was but 8·42 for 1896, and 9·42 for 1899. Building operations are being carried on extensively. Some new roads are 50 and 60 feet in width, and many are planted with trees, and some provided with public seats."

we have already described. The three organs of local administration—council, committees, and a paid staff—reappear, and their mutual relations are also the same. The number and composition of its committees are left entirely to the discretion of the council, but every committee must be re-constituted in each year, even if the council adopts the system of triennial elections. Under ^{The committee system.} a section of the Public Health Act it is provided that the committee of an urban sanitary authority (including, of course, municipal councils so far as their administration of sanitary law is concerned) “shall in no case be authorised to borrow any money, to make any rate, or to enter into any contract.”¹ The section still applies to a borough council acting as urban sanitary authority; and though it has been repealed by the Act of 1894 so far as urban district councils are concerned, its effect has been preserved as follows:—

Provided that where a committee is appointed by any district council for any of the purposes of the Public Health or Highway Acts, the council may authorise the committee to institute any proceeding, or do any act which the council might have instituted or done for that purpose, other than the raising of any loan or the making of any rate or contract.²

Generally speaking, the acts of every committee must be submitted to the district council for its approval; but under the provision above quoted, sanitary and highway business may be delegated; and in that case, except as regards loans, rates, and contracts, the committee takes the place of the council and acts independently until the council chooses to resume its powers. Thus the committee system in urban districts is freer than in boroughs, the Parliament of 1894 having, it would seem, approved of this feature of the County Councils Act.³ Joint-committees may also be formed by

¹ Public Health Act 1875, sec. 200. Nevertheless, a contract (for more than £50) entered into by a joint-committee of urban authorities was enforced against them by the Court of Appeal in 1881.—*Eaton v. Basker and Corporation of Grantham*, 7 Q.B.D. 521. It may be respectfully submitted that the learned judges were wrong.

² Local Government Act 1894, sec. 56 (1).

³ The Courts, however, acting on the principle *delegatus non potest delegare*, have decided that a committee cannot pass on its delegated powers to a sub-committee, but must exercise them as a body.—*Cook v. Ward* (1877), 2 C.P.D. 255.

district and parish councils "for any purpose in respect of which they are jointly interested." This enables district councils to combine for establishing joint isolation hospitals, sewage farms, etc., and so to benefit by the economy of large operations. The only restriction on the powers of a joint-committee is that councils may not delegate to it any power to borrow money or to make any rate.

In yet another respect a district council has a freer hand with regard to committees than a borough council. It is not bound to restrict its choice to councillors. In the words of the Act: "A parish or district council may appoint committees consisting wholly or partly of members of the council, for the exercise of any powers which, in the opinion of the council, can be properly exercised by committees."¹ Minutes must be kept of each meeting, and signed by the chairman; and where minutes of the proceedings have been kept and duly signed, the committee is presumed to have been duly constituted until the contrary is proved.² Subject to the regulations of the council, the committee has power to regulate its own proceedings, to decide what constitutes a quorum, and to appoint any place, either within or without the district, for its place of meeting.³

All proceedings of committees which require confirmation are "approved" at meetings of the council in the manner already described in a previous chapter on boroughs. Here, as in the case of boroughs, it may be taken that the larger the council, and the greater the mass of business to be disposed of, the more unreal and formal does the process of approving or confirming the minutes tend to become. The minute books of committees are also, of course, open to the inspection of members of the council. The ordinary standing committees are for works and general purposes, finance, highways, and lighting, public health, property, and estate. Special committees exist to preside over branches of administration authorised by local or adoptive Acts. Thus many district councils have a libraries committee, an electric lighting committee, or a tramways committee. Committees

¹ Local Government Act 1894, sec. 56 (1).

² Local Government Act 1894, Schedule I. Part III.

³ Local Government Act 1894, Schedule I. Part IV.

are constituted at the statutory meeting which falls on 15th April.

The rules of debate are contained in the Standing Orders, which also prescribe for committees of the whole council, for the powers of the chairman, for notices of motion, for summons to meetings of the council, for declarations on taking office, and for fines on refusal to take office—in a word, for all or nearly all those subjects which we have already referred to in our account of the Standing Orders of borough councils. Indeed, the Standing Orders of some district councils are almost as elaborate as those of large boroughs. Others, again, content themselves with a brief supplement to the statutory regulations. But whether short or long, rough or fine, these Standing Orders are the instruments of self-regulation and the emblems of internal autonomy. The smallest urban authority is as free to make and change its own rules as the largest county borough. And so long as they are not unlawful, no Court of Justice, or department of Government, can interfere.

An important section of the Standing Orders, especially in the larger districts, is that which regulates the official staff. Here, again, no substantial difference exists between district and borough organisation. In many small urban districts, of course, the officers and servants are few, their pay is small, and there is little differentiation of service. The conduct of business depends upon the relation between the council, its committees, and the several departments over which they preside. Very often committees are dispensed with, the council doing its committee work in private, and then opening its proceedings to the public—that is to say, admitting reporters.

The staff of
officers and
servants.

Over each department is a salaried officer who attends the meetings of the committee to which his department is attached, and carries out its instructions. The indispensable minimum of an urban district council's staff is prescribed in the Public Health Act: "Every urban authority shall, from time to time, appoint fit and proper persons to be medical officer of health, surveyor, inspector of nuisances, clerk, and treasurer. . . . Every urban authority shall also appoint or employ such assistants, collectors, and other officers or servants as may be

necessary and proper for the efficient execution of this Act, and may make regulations with respect to the duties and conduct of the officers and servants so appointed or employed.”¹ By the same section the urban authority may, subject to the powers of the Local Government Board over officers whose salaries are partly paid by Parliament, give “such reasonable salaries, wages, or allowances” as it thinks proper. And, subject again to the powers of the Local Government Board, “every such officer and servant . . . shall be removable by the urban authority at their pleasure.” The chief officers, or at least the statutory officers, of an urban district council are the medical officer of health, the district surveyor, the inspector of nuisances, the treasurer, and the clerk. Of these the medical officer seldom attends council or committee meetings, the treasurer never. Indeed, the office is little more than a fiction; for in practice he is almost always the manager of a local bank. No salary would be necessary if the council were allowed to borrow from the bank and to pay interest on overdrafts. But as the Local Government Board disallows and surcharges interest if the council is not in credit, a salary is paid which, as nearly as possible, covers the interest. The treasurer is only consulted as a banker, and not as a real officer of the council. The position of the clerk corresponds with that of the Town Clerk. We need not describe him; for *mutatis mutandis*, the picture would be a mere replica of a portrait already drawn in one of our municipal chapters. It is more usual, however—more usual in an urban district than a borough—for the clerk to supervise the keeping of the accounts, besides exercising a general control over the other executive departments. If, as often happens, the clerk is not a professional lawyer, a solicitor is often appointed to aid the clerk in advising the council on points of law. The clerk’s authority over the other officials is also, as a rule, more pronounced in urban districts than in boroughs, and his influence over the council is therefore proportionately greater.² But the question of influence depends so much upon personal qualities that we cannot do

¹ Public Health Act 1875, sec. 189.

² Cf. Hornsey Standing Orders 48-74. In this large district an assistant-clerk is appointed.

more than state a tendency, which is moreover increased by the consideration that the average population of an urban district is much smaller than that of a borough. It may be that the social position of a district clerk is not quite equal to that of the Town Clerk in a municipal borough, as a district chairman has not the dignity and trappings of a Mayor. But the difference is slight, and few district clerks—it may with confidence be asserted—would accept the superior dignity if it involved a lower salary. The duties of the medical officer of health have already been explained. He may, with the sanction of the Local Government Board, be appointed for two or more districts.¹ The same person may be both surveyor and inspector of nuisances. On the other hand, the office of treasurer is stringently dissociated from that of clerk—

Neither the person holding the office of treasurer, nor his partner, nor any person in the service or employ of them, or either of them, shall be eligible to hold, or shall in any manner assist or officiate in the office of clerk; and neither the person holding the office of clerk, nor his partner, nor any person in the service or employ of them, or either of them, shall be eligible to hold, or shall in any manner assist or officiate in the office of treasurer.²

Safeguards against
personal
corruption.

The treasurer plays the same rôle as in a municipal borough. In some cases cheques are signed by three members of the council and they are always countersigned by the clerk. Sometimes an accountant is appointed, but as a rule, as we have said, it is the clerk who controls the book-keeping department. Another office mentioned in the Act of 1875 is that of collector of rates, who is placed of course in strict subordination to the department of accounts. Every officer or servant employed in the collection of any rate made under the Public Health Act "shall, within seven days after he has received any moneys on account of any such rate, pay over the same to the treasurer, and shall, as and when the local authority may direct, deliver a list signed by him, and containing the names of all persons who have neglected or refused to pay any such rate, and the sums respectively due from them."³ In this and the following

¹ Public Health Act 1875, sec. 191. ² Public Health Act 1875, sec. 192.

³ Public Health Act 1875, sec. 195.

section of the Public Health Act there are contained other very important financial safeguards. Every officer and servant of a sanitary authority must, when required, "make out and deliver to them a true and perfect account, in writing, of all moneys received by him," and shall, together with the account, "deliver the vouchers or receipts for all payments made by him, and pay over to the treasurer all moneys owing by him on the balance of accounts." If the officer or servant makes default, "the local authority may complain to any Justice, and such Justice shall thereupon summon the party charged to appear before a court of summary jurisdiction." Moreover, before entering upon any office or employment involving the custody or control of money, the officer or servant appointed is required to give a sufficient security.¹ Lastly, there is a wise provision that no officer or servant shall "in any wise be concerned or interested in any bargain or contract" made with the council which employs him. If convicted of so doing, or of other corrupt practices, he loses his office, becomes incapable for life of holding any office under the Public Health Acts, and forfeits the sum of fifty pounds.²

Generally speaking, the appointment, control, and dismissal of its staff of officers and servants are all entirely in the hands of the district council and its committees. The medical officer of health and the inspectors of nuisances (who are partly under his control) are, as we have noticed elsewhere, exceptions to the rule. Half of their salaries may be paid out of the assigned revenues by the County Council, and the Local Government Board is authorised by the Public Health Act to prescribe the qualification, mode of appointment, tenure of office, duties and salary, of any local officer whose salary is partly paid by Parliament.³

¹ Public Health Act 1875, sec. 194.

² Public Health Act 1875, sec. 193. Cf. Public Bodies Corrupt Practices Act 1889; and as regards contracts, cf. the Public Health (Members and Officers) Act 1885, which modifies the restriction a little by allowing an officer or servant to be interested as a shareholder with the consent of the authority in a contract for the sale or hiring of lands, offices, etc.

³ See pp. 35-37 and p. 156. It is certain that some urban district councils do not take the grant, and are therefore free from the Board's control. If the medical officer is not also inspector of nuisances, the inspector or inspectors are placed partly under his supervision, partly under that of the surveyor where the offices of surveyor and inspector are distinct. Their duty is to make periodical

Officers whose salaries are not paid by the County Council are, in the absence of some special provision, entirely under the control of the urban district council, and the "regulations" which it may make for their guidance, unlike bye-laws, are not subject to the confirmation of the Local Government Board. Under the first Public Health Act of 1848, the conduct of the officers and servants of the sanitary authority could only be regulated by bye-laws, which had to be approved by the Board of Health—the object of Chadwick and his friends being of course to create a bureaucratic control of the utmost possible strength and to make the local boards of health the instruments of an enlightened central board. That ideal has given place to a better one. The modern urban district council is, as we have seen, with exceptions which are hardly felt in practice, self-governing and self-regulating. Most of its officers and other employees are responsible to the Council alone, and almost invariably exhibit a loyalty to the governing body, which the members of that body and its committees are not slow to reciprocate. The financial organisation of an urban district council generally resembles that of a municipality, and usually follows the model of a borough in preference to that of a county where the two types differ.¹ The general control of estimates, expenditure, and taxation is undertaken by a (non-statutory) finance committee. They do their work as a rule without red tape, in a business-like fashion, assisted by the clerk. There is no borough fund but only a district fund,² which is formed in the first instance out of such revenues as the urban district council may derive from property, profitable undertakings, fines, etc. If, as must almost invariably be the case, these revenues prove insufficient to defray the expenses chargeable on the district fund, then "the urban authority shall from time to time, as occasion may require, make by writing under their common seal, and levy in addition to any

The general district rate.

visits of inspection throughout the district, to see that laws and bye-laws with regard to streets, buildings, etc., are not being infringed, and generally to guard against the creation of conditions dangerous to health. By a circular of the Home Office (2nd Dec. 1873), police officers are forbidden to be inspectors of nuisances. For the duties of inspectors, cf. Orders of the Local Government Board.

¹ Except in regard to audit.

² The district fund is constituted by Public Health Act 1875, sec. 209.

other rate leviable by them under this Act, a rate or rates to be called 'general district rates.'"¹

The general district rate is the general rate for sanitary purposes and is levied by practically all municipal and urban authorities. It is the main resource of urban sanitary authorities. Inasmuch as the borough rate is a peculiar feature of municipal taxation, it seemed proper to defer detailed consideration of the general district rate until we reached the present chapter on Urban District Councils, whose strictly local revenue is, as a rule, almost wholly derived from that source. First, then, as to the character of this most important local tax, under which many millions of money are annually raised for sanitary purposes throughout the kingdom. The general district rate is made and levied upon all kinds of property by law assessable within the district or borough to any rate for the relief of the poor. And it "shall be assessed on the full net annual value of such property, ascertained by the valuation list for the time being in force, or, if there is none, by the rate for the relief of the poor made next before the making of the assessment under this Act"² If the rateable value of premises is less than ten pounds, or they are let to weekly or monthly tenants, the owner may be rated instead of the occupier, a reduction being made to allow for the cost of collection. If the owner agrees to pay whether the premises are let or not, the assessment may be reduced by one half. But the chief exception to the principle that the general district rate shall be assessed on "the full net annual value" of the property liable is contained in the following provision, devised for the relief of owners of such property as might be supposed not to get the full benefit of expenditure out of the rate:³—

¹ The general district rate is made under the Public Health Act 1875, secs. 210, 211, 218-228.

² Public Health Act 1875, sec. 211 (1). Certain "exceptions, regulations, and conditions" follow, of which the principal ones are mentioned above.

³ The following is a brief summary of the principal expenses chargeable on the general district rate:—Sewerage and drainage, highways and streets, lighting, water supply, prevention of nuisances, treatment of diseases, burial-grounds and pleasure-grounds, expenses of members and officers of the Council, and of legal proceedings undertaken in the execution of the Public Health Acts; also expenses under the Baths and Wash-houses Acts, Public Libraries Acts, Allotments Acts, Housing of the Working Classes Acts, the Local Government Act of 1894, etc. etc. We need hardly add that the rate cannot legally be applied to any but a statutory purpose.

The owner of any tithes or of any tithe commutation rent charge, or the occupier of any land used as arable meadow or pasture land only, or as woodlands, market gardens, or nursery grounds, and the occupier of any land covered with water, or used only as a canal or towing-path for the same, or as a railway constructed under the powers of any Act of Parliament for public conveyance, shall be assessed in respect of the same in the proportion of one-fourth only of such net annual value thereof.¹

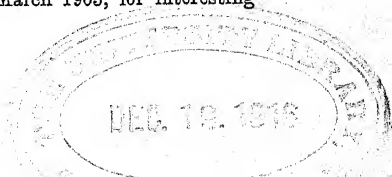
The above provision was doubtless introduced partly to please the agricultural and railway interests, both of which are strongly represented in Parliament; but it is far more defensible on economic grounds than the Agricultural Rates Act. It is an assertion of the principle of benefit, and it does not involve any grant-in-aid from Parliament. This mode of assessment at one-fourth of the rateable value only applies of course (1) to the property specified (2) when it is situated within an urban district or borough (3) for the purpose of the general district rate. Other kinds of property may be exempted under local Acts. Unoccupied premises are included in the rate, but not charged. So far it has been a principle of the English law that the occupation and not the ownership of property shall be rateable. In a minority report of the Royal Commission on Local Taxation (1901), signed by the chairman and several of its most distinguished members, it has been proposed to introduce a new principle into English law by imposing a special rate upon urban site values, whether the land rated is occupied or not. Under the present law landlords, who are (as Adam Smith pointed out) in the position of monopolists, are certainly encouraged to keep land and houses idle until the requirements of a growing town force up the price. The rating of unoccupied land would generally tend to encourage building and to lower rents.²

For the purposes of the general district rate an urban authority may divide its district into parts, and may make a separate assessment upon each part. In such a case the title "general district rate" is not happy; but curiously enough the Legislature has restricted the appropriate name "special district rate" to that levied by a rural sanitary authority. In certain cases of expenditure

Private improve-
ment rates.

¹ Public Health Act 1875, sec. 211 (1) (b).

² Cf. Hansard, 19th February 1902 and 27th March 1903, for interesting debates on Bills for the rating of site values.



beneficial to private persons, rather than to a section of the community, or a part of the district, an urban authority may declare such expenses to be "private improvement expenses," and may then "make and levy on the occupier of the premises in respect of which the expenses have been incurred, in addition to all other rates, a rate or rates to be called "private improvement rates" of such amount as will be sufficient to discharge such expenses, together with interest at a rate of not more than 5 per cent for a period not exceeding thirty years.¹ The extraordinary thing is that expenses of this kind, which are of the nature of a capital outlay and a permanent improvement to property, should be laid not upon the owner but upon that most patient of all beasts of burden, the occupier. Only so long as the premises are unoccupied is the private improvement rate charged on the owner.² The private improvement rate is therefore only a half-hearted adoption of the principle of betterment. It lays a charge upon the right property but the wrong person; and an unexpected "declaration" often bears most oppressively upon the unfortunate occupier, who may be approaching the end of his tenancy, and will therefore simply contribute to raise the rent against himself or his successor.³

¹ Public Health Act 1875, sec. 213: Among "private improvement expenses" may be mentioned (1) the construction of drains from undrained houses to join existing sewers (sec. 36); the construction of works for supplying houses with water (sec. 62); and the sewerage, levelling, paving, etc. of streets not repairable by the inhabitants at large (sec. 150). Section 268 of the Public Health Act gives an appeal to the Local Government Board from the council's decision to declare expenses "private improvement expenses." But the person aggrieved must complain to the Local Government Board within twenty-one days of receiving notice of the decision.

² By section 214, however, a proportion of the private improvement rate may be deducted from the rent; but by section 226 this concession is not to alter or affect any lease, contract, or agreement between landlord and tenant. Such covenants are generally construed against the tenant. Cf., for example, *Smith v. Robinson*, L.R. 1893, 2 Q.B. 53, and other cases cited in the commentaries on section 257 of the Public Health Act 1875.

³ Other provisions for the making, collecting, and recovery of private improvement and other rates will be found in the Public Health Act 1875, secs. 218-227, as regards, e.g. amendment, inspection, publication, and remission; see also section 256.

For the principle of betterment in local taxation (which was recognised in a London Act of 1697 after the Great Fire), cf. Blunden's *Local Taxation and Finance*, chap. ix., with authorities there quoted; and Hallgarten, *Die Kommunale Besteuerung des unverdienten Wertzuwachs in England*, 1899.

We have already observed that the rates levied by local authorities may only be expended on purposes strictly authorised by statute. But the Parliamentary costs of promoting a Bill in Parliament may be thrown by urban district councils upon the rates if the provisions of the Borough Funds Act are complied with, or in the case of opposing a Bill, if that opposition is plainly undertaken to defend the property or interests of the inhabitants.

The ordinary constitutional safeguards apply in equal measure to district and borough finance; but the legality of expenditure is more severely tested in the former case than in the latter. For, whereas the accounts of a borough council are at worst subjected to an amateur audit, or at best to the audit of professional accountants appointed by itself, and without any power to surcharge, the accounts of district councils are revised every year by auditors independent of the council, appointed by the Local Government Board, who are armed with ample powers and are usually competent. Accounts of the receipts and expenditure of an urban district council have to be made up to 31st March in each year in a form prescribed by the Local Government Board,¹ and these accounts are then "audited and examined . . . as soon as can be after the twenty-fifth day of March by the auditor of accounts relating to the relief of the poor,"—that is to say, by a "district auditor."² The council must give fourteen days' notice of the time and place of audit, and for seven days before the audit all note-books, extracts, receipts, and other accounts are open to the inspection of all persons

Annual audit of
district accounts
by the Local
Government
Board.

¹ See Public Health Act 1875, sec. 245, and Local Government Act 1894, sec. 58 (1). For the forms prescribed, see Orders of the Local Government Board, 20th, 26th, and 27th April 1900, for district and parish councils.

² See section 58 (2) of the Local Government Act 1894, which provides that the accounts of an urban district council shall "be audited by a district auditor, and the enactments relating to audit by district auditors of accounts of urban sanitary authorities and their officers, and to all matters incidental thereto and consequential thereon, shall apply accordingly." This is a good example of legislation by reference, as it incorporates Public Health Act 1875, secs. 247 and 250, as amended by the District Auditors Act 1879. Under the last-named Act England and Wales are divided into 33 audit districts exclusive of London.

interested.¹ The district auditor may require the production of any necessary papers, and the appearance before him of any persons accountable. Any ratepayer or property owner in the district may be present at the audit and may raise objections to any item in the accounts. The following subsection, which gives the power to disallow and surcharge, had better be given in full:—

Any auditor acting in pursuance of this section shall disallow every item of account contrary to law, and surcharge the same on the person making or authorising the making of the illegal payment, and shall charge against any person accounting the amount of any deficiency or loss incurred by the negligence or misconduct of that person, or of any sum which ought to have been but is not brought into account by that person, and shall in every such case certify the amount due from such person, and on application by any party aggrieved shall state in writing the reasons for his decision in respect of such disallowance or surcharge, and also of any allowance which he may have made.²

Any person aggrieved by disallowance may apply to the Court of King's Bench for a writ of *certiorari* to remove the disallowance into that court.³ If it appear to the court that the decision of the district auditor was erroneous, they shall "order such sum of money as may have been improperly allowed, disallowed, or surcharged to be paid to the party entitled thereto by the party who ought to repay or discharge the same."⁴ An alternative method is also provided. In lieu of applying for a writ of *certiorari* the person aggrieved may apply to the Local Government Board "to inquire into and to decide upon the lawfulness of the reasons stated by the auditor for such allowance, disallowance, or surcharge; and it shall thereupon be lawful for the said (Board) to issue such order therein under their seal as they may deem requisite for determining the

¹ Public Health Act 1875, sec. 247 (4). A great improvement on the provisions for the publication and inspection of municipal accounts, which have in many instances (*e.g.* at Warrington, see local press, January 1902) proved lamentably deficient.

² Public Health Act 1875, sec. 247 (7).

³ Sec. 247 (8).

⁴ Poor Law Amendment Act 1844 (7 and 8 Vict. c. 101), sec. 35. As a government audit was first applied to Poor Law authorities, Poor Law precedents have been followed in the case of other authorities.

question.”¹ This appeal to the Local Government Board is very common, for the Board “may decide the same according to the merits of the case,” and is generally found to be more tender-hearted than its auditors. Moreover, an appeal to the Board costs nothing, whereas the proceedings by *certiorari* involve considerable expenditure. Ratepayers and owners have the same right of appeal against allowances as they have against disallowances. Sums certified by the auditor to be due from any person must be paid to the treasurer of the authority within fourteen days. Otherwise they may be recovered like sums due in respect of the poor rate, *i.e.* by distress or sale of the defaulter’s goods. Lastly, within fourteen days after completion of the audit, the district auditor delivers a report to the clerk of the urban district council, who thereupon publishes an abstract in one of the local newspapers. The rules as to notice of audit, abstract of accounts, and the reports of the auditors, may be modified at any time by the Local Government Board.² The reports of joint-committees, provided that at least one of the councils represented on the joint-committee is not a borough council, are audited in the same way by a district auditor.³

As regards borrowing powers, urban district councils stand on almost precisely the same footing as borough councils, and it is therefore unnecessary to describe again the legal and administrative restraints upon the accumulation of debt. Besides the necessity for obtaining the consent of the Local Government Board and for repaying principal as well as interest, an urban district council is forbidden to contract debts under the Public Health Acts to an amount exceeding two years’ assessable value of the premises assessable within the district.⁴

But we cannot leave the subject of finance and financial administration without again observing that this is the one

¹ Poor Law Amendment Act 1844, sec. 36, applied to urban authorities other than municipal boroughs by Public Health Act 1875, sec. 247 (9).

² Local Government Act 1894, sec. 53 (3).

³ Local Government Act 1894, sec. 53 (2). For further information on audit see the index to these volumes, and further the editions of the Public Health Acts by Macmorran or Glen, and their notes to secs. 245-247, Public Health Act 1875.

⁴ See Public Health Act 1875, sec. 234 (2).

department in which a marked difference both of form and substance shows itself as between urban and municipal government. That difference is seen by contrasting the relationship of an urban district council to the Local Government Board on the one hand, and the County Council on the other, with

Control of the
county and of
the Local
Government
Board.

the relationship of a Borough Council to the same authorities. County boroughs, as we have seen, are entirely independent of County Councils. All other boroughs are more or less within the administrative area of the county, and are more or less subject to the government of the County Councils. A very small borough which has neither its own magistracy nor its own police is not more independent of the county than an urban district. The County Council control of municipal administration is a very varying quantity. The control exercised over boroughs by the Local Government Board is far more uniform, though the larger boroughs, which can afford in case of interference to dispense with small grants-in-aid and do not dread the cost of private Bill legislation, are practically independent. But every borough may pass bye-laws for the good government of the town which do not require to be approved by the Local Government Board; and most important of all, every borough is exempt from the annual visit of the Board's auditor.¹ An urban district council is therefore in a position similar to that of the councils of inferior boroughs so far as the County Council is concerned. But it is far more strictly subjected to the control of the Local Government Board, owing to the institution of audit. Most of the sanitary powers of the Board are exercised over all sanitary authorities alike. The remark which we have often made, that these powers are not discretionary, applies equally to those which are exercised by way of audit over non-municipal bodies only. The Board and its officers have no discretion to dispense with or to modify the law. They can scarcely be said even to have power to interpret the law. Their function is to see that the law is carried out and to prevent illegal administration and illegal expenditure. It

¹ Except as regards education accounts. For the powers of urban district councils under the Education Act 1902, see later, p. 229 *sqq.*

is interesting to observe, in a recent report issued by the clerk of a large urban district council on the advantages and disadvantages of incorporation, that the abolition of the audit of the Local Government Board is counted among the objections to applying for a charter.¹

¹ See report by the clerk to the Wallasey Urban District Council in 1901. The council had a population of 53,800, a rateable value of £321,000, and owned the following commercial undertakings :—Ferries, tramways, gasworks, waterworks, and electrical establishments. It also possessed a cemetery, a fire-brigade, a hospital, free libraries, and technical schools. The principal reason for applying for a charter seemed to be the danger of absorption by the neighbouring municipality of Birkenhead. The chief reasons against such an application were the institution of aldermen, the abolition of the Local Government Board's audit, and the substitution of two rates for one general district rate. In a still more recent report on the same subject another clerk impartially mentions the abolition of the Local Government Board's audit, both among the advantages and the disadvantages of incorporation.

CHAPTER II

RURAL DISTRICTS AND RURAL DISTRICT COUNCILS¹

ONE of the main difficulties encountered by the Legislature in creating and reorganising sanitary administration was, as we have seen, the constitution of convenient sanitary districts and competent authorities in those parts of the country which possessed no sort of town government. The problem was solved by the adoption of the Poor Law Union as the rural area, and of the Board of Guardians as the rural authority for carrying out the sanitary laws consolidated in the great Act of 1875. But this solution was far from being so simple or satisfactory as might at first sight appear; for in many cases the new sanitary district and the new sanitary authority required modifications. Under the Act of 1875 there were three kinds of urban sanitary districts—namely, boroughs, improvement commissioners' districts, and local board districts. But the Poor Law Unions, having been constituted without reference to any of the three, were in hundreds of cases partly urban and partly rural. Before, then, a partly urban union could become a rural sanitary area, those portions which were within the district of an urban sanitary authority had to be cut off. For Poor Law purposes the old union

¹ See the Local Government Act 1894, which created rural district councils, and the Public Health Act 1875, secs. 5, 9, 11, 229-232, and Parts III., IV., and VI. *passim*. Elections of rural district councillors are regulated by order of the Local Government Board, 1st January 1898 (Glen, vol. ii. p. 1975).

For short general descriptions see Jenks, Blake Odgers, Arminjon, Vauthier; also Wright and Hobhouse, p. 14.

There were 683 rural districts in 1898-99, according to the thirtieth report of the Local Government Board, of which 132 only were also Poor Law Unions.

remained as before. For sanitary purposes part of it went to form an urban, part a rural sanitary district; and the authority itself underwent a corresponding alteration. Where the Poor Law Union was wholly rural, the rural sanitary authority was composed of all the guardians; where it was only partly rural all guardians elected by urban parishes, and all *ex-officio* guardians residing in urban parishes, were excluded from the new rural sanitary authority.¹

In effect, therefore, a new organ and a new territorial unit have been created by the Public Health Acts for the purpose of executing sanitary laws in country districts. But the result was still unsatisfactory, in spite of the operation of the Act of 1888,² until, in 1894, the connection between Poor Law Unions and rural (sanitary) districts was again modified by the provision that the latter may not cut the county boundary.

Where a rural sanitary district is on the appointed day situate in more than one administrative county, such portion thereof as is situate in each administrative county shall, save as otherwise provided by or in pursuance of this or any other Act, be as from the appointed day a rural district.³

Since 1894, therefore, all rural (sanitary) districts, as well as all urban sanitary districts, have become integral parts of the county—"county districts" in the strictest sense; and so, for the first time, the geography of local government has attained a certain regularity, but in true English fashion—not by one stroke of political logic, but by piecemeal reforms made from time to time without reference to any preconceived scheme of classification. If you exclude boroughs and urban districts, the parish, the rural district, and the county appear

¹ See sections 5 and 9 of the Public Health Act 1875. The style "urban and rural sanitary authorities" was invented by the Public Health Act of 1872. By the Act of 1894 rural sanitary districts are called "rural districts," and their authorities are rural district councils.

² Sec. 57 of the County Councils Act of 1888, which is incorporated with the Parish Councils Act of 1894, only empowered County Councils by an order confirmed by the Local Government Board to alter the boundaries of rural and urban districts, to transfer portions, and to form new ones.

³ Local Government Act 1894, sec. 24 (5). It appears that under section 36 the County Council might for special reasons direct that a rural district should remain in two counties. There are a few cases of this having been done, see *Annual Local Taxation Returns for 1899-1900*, Part III. p. 2 *sqq.*

as three concentric spheres contained one within the other. This result has been obtained by progressive modifications of older areas. In the case of the rural district the old area, the Poor Law Union, was a mere group of parishes formed without reference to history, or to any other principle than the convenience of Poor Law administration—as if poor relief had no connection with the other parts of local government. Simplicity and order have been introduced by making the boundary of the county the dominant consideration, and the rural district now differs more often than not from the Poor Law Union, which was the old rural area for administering public health.

The alterations in boundary, carried out under the Acts of 1888 and 1894, were accompanied by a still more radical

Constitution of
the new rural
district council.

change in the constitution of the governing body itself; for the rural district council, set up by the Act of 1894, may almost be described as a new authority. Whereas, urban district councils are the old urban sanitary authorities with a change of name and franchise; the rural district council is regarded as a new authority to which "all the powers, duties, and liabilities of the rural sanitary authority in the district,"—that is to say, of the guardians,—have been transferred. At the same time the highway boards ceased to exist, and the new rural district council became the successor, not only of the rural sanitary authority, but also of the highway authority.¹ The relationship between the rural sanitary authority and the Poor Law authority was reversed. Instead of having a rural sanitary authority as the result of an election of guardians, we now have a Poor Law authority as the result of an election of rural district councillors. To speak quite accurately, every rural

¹ Local Government Act 1894, sec. 25 (1): "Rural District Councils . . . shall also have, in respect to highways, all the powers, duties, and liabilities of an urban sanitary authority under secs. 144-148 of the Public Health Act 1875." The consequence was that three classes of rural highway authorities, which coexisted up to 1894, were abolished, and the Rural District Council obtained all the powers, duties, and liabilities of surveyors of highways, and all the powers conferred by the Highway Acts on the inhabitants in vestry assembled of any parish within the district. The rural council may agree with any person for the making of new public roads, and it may also enter into agreements with any persons liable to repair any road (*ratione tenuræ*), with a view to taking over its maintenance and repair.

district councillor represents his parish on the Board of Guardians; and in rural parishes there is no longer any special election for Boards of Guardians. In the words of the Act, "Guardians, as such," are no longer elected. Where a rural district and a union are identical, the rural district council consists of the same persons as the Board of Guardians. The clerk to the one body is usually the clerk to the other, and the meetings of the two bodies are usually held in succession. They sit first as rural district councillors, and then as guardians. Thus, by a purely formal change, in all cases where the union is identical with the rural sanitary district, the administration of the Poor Law might be made, like the maintenance of roads, part of the ordinary business¹ of the local authority. At present, however, the two bodies remain in form distinct, even where their districts and their members (apart from *ex officio* persons) are the same.

Passing now to the basis upon which the new rural authority was constituted, we are brought at once into direct contact with one of the most important political features of the Local Government Act of 1894. The new body consists of councillors—one, or more, of whom is elected by the parochial electors in each polling district. Ordinarily each parish of which the rural district is composed forms a polling district, but parishes may be added together, or divided into wards for this purpose,² by the County Council. The provision by which urban and rural district councillors (and guardians) are elected by the parochial electors The franchise. of the parishes constituting the district or union is, as was previously pointed out, the most liberal and democratic known to English law, for it combines all inhabitants of the district who are on the Parliamentary electors' list with all who are

¹ Cf. Local Government Act 1894, sec. 24 (3). One drawback to concentration, and to the abolition of *ad hoc* authorities for the purposes of Poor Law and education, is that people who are devoted to philanthropy and education may not be willing to stand for bodies which combine sanitary and other work with that which they care for. In this way valuable services might here and there be lost to Poor Law administration. But rural guardians have long done sanitary work, and the case for an *ad hoc* authority is much weaker in the business of poor relief than of education.

² Cf. L.G.A. 1894, sec. 24 (1) and sec. 60 (1). This union of parishes for the purpose of electing rural district councillors must not be confused with the grouping of parishes for the purpose of parish councils (cf. L.G.A. 1894 sec. 1 (1)).

on the Local Government electors' list, without distinction of sex. At the same time, the property qualification for guardians was repealed, and the principle of "one man one vote" introduced. The latter change was particularly sweeping, since, before the year 1894, the guardians (and therefore the rural sanitary authority) were elected upon highly plutocratic principles. Voters were of two classes—owners and ratepayers. Each owner or each ratepayer was entitled to at least one vote, but he might have as many as six;¹ and if an owner occupied his own property, he might, under the old *régime*, have as many as twelve votes. The term of office of

Terms of office, qualifications and election of rural district councillors and guardians is three years, one-third of the members (or as nearly as may be) going out of office every year on 15th April. In some Unions, however, before 1894,

a triennial service of guardians had been established by order of the Local Government Board. In these Unions this system of retirement was continued by the Act of 1894, "unless the County Council, or a joint-committee of the County Councils, on the application of the Board of Guardians, or of any district council of a district wholly or partially within the Union, otherwise direct." The system of triennial simultaneous retirement may further be extended to any district council and Board of Guardians, if such council applies to the County Council, and the County Council consents to make an order for that purpose.²

The disqualifications for the office of rural district councillor (and therefore of rural guardian) are the same as those for the office of a guardian in an urban district or borough, and include all those which we have already mentioned as applying to urban district councillors in the previous chapter, with the addition that a person disqualified for the office of guardian is also disqualified for the office of rural district councillor.³ They are set out at length in the forty-sixth section of the Local Government Act of 1894. There are no aldermen in a rural

¹ Under the scale fixed by 7 and 8 Vict. c. 101, sec. 14, cf. historical part, vol. i. p. 142.

² See Local Government Act 1894, sec. 24 (4), and sec. 20 (6).

³ Local Government Act 1894, sec. 46 (5); for an example of an additional disqualification introduced by this sub-section, cf. 5 and 6 Vict. c. 57, sec. 14, with regard to dismissed Poor Law officers serving as guardians.

district council. The whole council is directly elected by the inhabitants.

With some small exceptions and modifications, the provisions of the Municipal Corporations Acts are applied to rural district councillors, so far as they relate to expenses of elections, the acceptance of office, re-eligibility and casual vacancies.¹ The law with regard to resignation is borrowed, in the case of urban district councillors, from the Municipal Code, in that of rural district councillors, from the Poor Laws, which enable the Local Government Board to accept the resignation of any guardian (and therefore of any rural district councillor) for any cause they may deem reasonable.² Moreover, the rules of the Local Government Board, by which, as we have seen, the elections of both urban and rural district councillors are regulated, may provide that the expenses of contested elections for rural district councillors shall fall, as they previously fell, upon the parishes instead of upon the whole rural district or union. Under the provisions of the Municipal Code the expenses of each contested election are saddled upon the local area as a whole instead of upon the electoral subdivision—the ward or parish as the case may be. The old theory of Poor Law Union elections was that, since a contested election is a parochial concern, it should also be a parochial expense. The same argument applies to rural district councils which, like Boards of Guardians, are composed of representatives elected by the constituent parishes. The law is therefore right in giving the Local Government Board a discretionary power to keep the old system in force.³ The actual elections are conducted in accordance with rules framed by the Local Government Board, whose powers are of course strictly circumscribed by the provisions of the Act.⁴

We now proceed from the formal constitution to the substantial powers of the rural district council; and here, again, the rural body shows a strong family likeness to its urban correlative. It is upon the differences only that we need to insist, since the powers of a rural district council are

¹ See Local Government Act 1894, sec. 48 (4a).

² 5 and 6 Vict. c. 57, sec. 11.

³ Local Government Act 1894, sec. 48 (4c).

⁴ See Local Government Act 1894, secs. 20 (5), and 48 (2).

nearly all included in those of an urban district council, which have already been described in the preceding chapter. First, then, as regards public health. Like municipal and urban councils, a rural district council derives most of its sanitary functions from the Public Health Act of 1875, and the distinction between urban and rural sanitation is a distinction not of kind, but of degree. Many powers which are imperatively required by the sanitary authority of a town are not required by, and have therefore not been conferred upon, that of a rural area. But the principal provisions of sanitary legislation apply to rural as well as to urban sanitary authorities. A rural district council is the rural sanitary authority, and a rural sanitary authority is a "local authority" within the meaning of the Public Health Act of 1875.¹

Generally speaking, then, a rural sanitary authority possesses the same powers with regard to the drainage of its district and the removal of nuisances as an urban sanitary authority. It will be remembered that Part III. of the Public Health Act (secs. 13-143)² contains the bulk of the sanitary code. Most of these sections impose duties or confer powers upon "the local authority," i.e. upon both rural and urban sanitary authorities. But many minor and some important provisions relate exclusively to urban authorities, as, for example, the paragraph dealing with offensive trades (secs. 112-115), and the paragraph in Part IV. which gives lighting powers to urban authorities only. Or again, to take another illustration, section 25 imposes a penalty on any person who builds or rebuilds a house without proper drains *in an urban district*.

Statutory powers restricted to urban authorities are called urban powers; but if a rural authority so desires it may apply to the Local Government Board to be invested in respect of the whole or part of the district (a "contributory place") with any power or powers conferred on urban authorities by the Public Health Act. And the Local Government Board may then by order

¹ See Public Health Act 1875, section 4, Definitions. By sec. 5, "for the purposes of this Act, England, except the metropolis, shall consist of districts to be called respectively (1) urban sanitary districts, and (2) rural sanitary districts."

² See vol. i. pp. 358-361, where an analysis of the Act of 1875 will be found.

comply with the request "either conditionally or subject to any conditions to be specified by the Board as to the time, portion of the district, or manner during, at, and in which, such powers, rights, duties, liabilities, capacities, and obligations are to be exercised and attach."¹

There is one useful piece of legislation, the Public Health (Water) Act of 1878, the principal provisions of which apply to rural sanitary authorities only. Lest, however, urban authorities should be deprived altogether of the benefits of the Act, discretion is given in the Act itself (sec. 11) to the Local Government Board to apply the Act to an urban district. An Act enabling a central authority to confer a rural power on an urban authority is something of a curiosity. But Parliament is not afraid of enacting a paradox if only it is useful.

How greatly the elasticity of local government has been increased by the operations of the Local Government Board at the request of rural district councils may be judged by a glance at the annual reports of the Local Government Board. In 1899 about 120 rural district councils obtained urban powers, mostly under the Public Health Acts, the Town Police Clauses Acts, and the Private Streets Works Act 1892. Sometimes the power (or powers) was obtained for the whole district, but more often for a contributory place or places within the district. Provisions for watering, cleansing, widening, and improving streets, and also for the making of bye-laws to prevent nuisances, seem to have been in especial demand during the last two or three years. Under the Act of 1894 the Local Government Board may also confer urban powers by general orders—as it were wholesale—upon all rural district councils.²

¹ See section 276 of the Public Health Act 1875. This section is constantly put into operation, especially in rural districts which contain a populous area. The investment of the rural district council with urban powers for a populous area often does away with the necessity for constituting a small and possibly inefficient urban district council. Other examples of "urban powers" are those under which public baths, slaughter houses, markets, etc., may be erected and public gardens laid out.

² Cf. 28th and 29th Annual Reports of the Local Government Board, and 30th Annual Report (1900-1901), p. cxxx. and p. vi4. In two cases during the year 1900 the Local Government Board approved of resolutions passed by rural district councils constituting special drainage districts, which are new rating

Of the purely sanitary duties imposed upon rural district councils by public health legislation, the principal may be summarised under the four heads of Water, Drainage, Nuisances, and Diseases. Most of the powers and duties of rural district councils in regard to the drainage and water-supply of their districts are contained in the Public Health Act of 1875. A rural district council, however, though under the Public Health Act its powers are less than those of an urban council, comes under certain special provisions of the Water Act of 1878. Some of these provisions are enabling, but a positive duty is laid upon every rural district council (by sec. 3) "to see that every occupied dwelling-house within their district has within a reasonable distance an available supply of wholesome water—sufficient for the consumption and use for domestic purposes of the inmates of the house." If there is not such a supply, the owner of the house may be required (subject to an appeal) to provide it.¹

Like other sanitary authorities, a rural district council is required to regulate common lodging-houses within its district with a view to preventing crime, immorality, and the spread of infectious diseases.²

After sanitary duties proper the most important work carried out by rural district councils is the maintenance and regulation of highways and footpaths. As we have already seen, every rural district council became in 1894 the highway authority.³ The main roads remain under the County Council, but in many

areas. These are examples of special orders. We are not aware that the Local Government Board has ever used the power conferred by the Local Government Act 1894, sec. 25 (5), to confer urban power on rural district councils by general order.

¹ It may be further observed that under section 62 of the Public Health Act 1875 both rural and urban authorities may require an owner to provide a water-supply for any house to which it can be supplied at a cost not exceeding the local water-rate or twopence a week (cf. *West Lancs. R.D.C. v. Ogilvy* [1899], 1 Q.B. 377). The object of the Water Act of 1878 is to obtain a supply of water where there is none available within a reasonable distance.

² See Public Health Act 1875, sec. 76 *sqq.*

³ Local Government Act 1894, sec. 25, in consequence of which secs. 144-148 of the Public Health Act 1875 now apply to all rural as well as to all urban districts. The powers of highway authorities have already been discussed briefly in previous chapters, and include the powers of the old "surveyors of highways."

cases they are repaired under an agreement with the superior body by the rural district council, though it may not, like an urban authority, claim to perform this function as a right. In the year ending 31st March 1900, the total length of the main roads in the administrative counties of England and Wales (excluding London) was 26,598 miles, of which 3819 miles were situate in urban districts, and no less than 22,779 miles in rural districts. The following extract, taken from the Local Government Board's Thirtieth Annual Report, shows that in the same year urban main roads were in almost all cases repaired by urban councils, while of rural main roads less than a third were repaired by rural councils:—

The County Councils themselves repaired during the year 15,670 miles of main roads, of which 370 miles were situate in urban districts, and 15,300 miles in rural districts. The amounts expended by the County Councils otherwise than out of loans during the year on the maintenance, repair, and improvement of these roads was £931,263.

The total length of main roads which the councils of urban districts repaired during the year was 3449 miles, and the amount of the contributions received by these councils from the County Councils during the year in respect of these roads was £694,421.*

The total length of main roads which the rural district councils repaired during the year was 7479 miles, and the amount of the contributions received by these councils from the County Councils during the year in respect of these roads was £399,027.¹

But besides the main roads there were other roads, extending over 95,554 miles, maintained by rural district councils at a cost of more than £1,700,000 during the year in question. Of these roads 92,665 miles are described as having been "kept metalled."² Every district council, rural as well as urban, is specially charged with the duty of protecting all public rights of way in its own or an adjoining district, and of preventing obstruction of paths and unlawful encroachment on roadside wastes.³ Similarly any district council, whether rural or urban, may, with the consent of the County Council, aid persons in maintaining rights of common "where, in the opinion of the Council, the extinction of such rights would be prejudicial to the inhabitants of the district."

¹ Thirtieth Annual Report of Local Government Board, p. xxxvii.

² *Id.* p. clxxv. In these statistics the Council of the Scilly Isles counts as a rural district council.

³ Local Government Act 1894, sec. 26 (1).

Rural district councils may also, with the consent of the County Council, exercise the powers conferred on urban authorities by the Commons Act of 1876 (sec. 8) in relation to any common within their districts. For these purposes,—that is to say, the restoration or preservation of commons,—district councils “may institute or defend any legal proceedings, and generally take such steps as they deem expedient.”¹

A rural district council has subsidiary duties to perform under the Factory and Workshops Act, which was passed in order that industries might not be carried on under conditions dangerous to health. It is also empowered to obtain from the Postmaster-General additional postal or telegraphic facilities for any part of its district, by undertaking to pay any loss which may be suffered by the General Post-Office in consequence. This is an interesting modification of the general theory of the British postal service, which now charges uniform rates for messages irrespective of their cost or distance to all parts of the United Kingdom. The question of allotments and small holdings is dealt with in other parts of this work. The rural sanitary authority had powers under the Allotment Acts 1887 and 1890. At the end of 1894, when the new rural district councils took their place, eighty-three of these rural authorities had purchased or hired 1836 acres of land in 151 parishes, and had distributed it among 4711 persons. From 1894 to 1897 only 160 acres of land were acquired for allotments and small holdings by only nine rural district councils—this falling off being accounted for by the activity of over a thousand parish councils.² Lastly—not to enumerate all the powers possessed by rural district councils—a word of praise is due to some of them for their activity in improving, by supervision and inspection, the deplorably insanitary condition of the cottages in many parts of the country. The conscience of the nation has been awakened to the seriousness of the housing problem in both town and country; and so far as the country is concerned, the rural district council, being the rural sanitary authority, would be the natural instrument of the Legislature. Already the rural district council is an

¹ Local Government Act 1894, sec. 26 (2) and (3).

² See Parliamentary returns 1896 and 1898.

authority under the Housing of the Working Classes Acts 1890 and 1900.¹

To carry out the tasks enforced on it by the Legislature, a rural district council has an organisation identical in almost all respects with that of an urban district council. As in the urban system, which we have already described, so here the centre of administrative gravity is often found in committees operating under the supervision of the whole body.

Committee
system, and
conditions of
rural government.

As the normal conditions of rural administration differ widely from those of urban, owing to the greater extent of a rural district, its subdivision into parishes, with parish councils, and the comparative sparsity of its population, it is remarkable that Parliament should have so closely assimilated urban and rural constitutions by the Act of 1894. So far as the statutory machinery of administration is concerned, only one important difference exists between urban and rural districts—a difference which is immediately connected with the subject of our next chapter. Under the Public Health Act² a rural sanitary authority might appoint a parochial committee to exercise delegated powers within the parish for which it is appointed; and that committee might be empowered to incur expenses not exceeding a prescribed amount. The expenses of a parochial committee must be reported to the authority, and must, if legally incurred, be discharged. These powers are continued by the Act of 1894, and vested in the rural district council. But if the parochial committee includes persons who are not district councillors, “those other persons shall, where there is a parish council, be, or be selected from, the members of the parish council.”³ The same section provides that the district council may, if it likes, substitute the parish council itself for the parochial committee. The provision is interesting as an expression of the idea that an organic relationship should be established between all local governing bodies to facilitate common action and to prevent the mis-

¹ Cf. circular letter of Local Government Board to rural district councils, Local Government Board's Thirtieth Annual Report, p. 22. By the Act of 1900 every rural district council may, with the consent of the County Council, adopt Part III. of the Act of 1890, either for a part or the whole of its district.

² Public Health Act 1875, sec. 202.

³ Local Government Act 1894, sec. 15.

understandings and friction which are so apt to arise between authorities having the same, or overlapping, or adjoining areas. During the debates of 1894 this principle found a strong advocate in Mr. Henry Hobhouse, who urged that the members of a superior authority should always be *ex-officio* members of the inferior body. But the amendments introduced into both Houses for giving full effect to this doctrine were rejected; and its advocates are left to console themselves with the section above referred to.¹

Rural district councils have the same powers with regard to the appointment of officers and the employment of servants which have been described in the previous chapter on Urban

Officers of the Council. Districts. It may be observed that, in accordance with the usual practice on the dissolution of a public body, provision was made in the Act of 1894 that the officers of highway authorities should be transferred along with their powers to the new rural district councils.

At the head of the staff is the clerk, whose office is usually associated for the sake of convenience with that of clerk to the guardians, especially in cases where the rural district is identical with the Poor Law union. The offices of clerk and treasurer are both statutory, and their salaries must be approved by the Local Government Board—a special precautionary control to which urban district councils are not subjected. A rural council is also obliged to appoint a medical officer of health and an inspector of nuisances. Two or more districts, however, may, with the approval of the Local Government Board, combine in the appointment and employment of a medical officer of health. A Poor Law doctor is eligible for that position. The Local Government Board has the same powers of control over the appointment and employment of medical officers of a rural district as it has over those of a Board of Guardians. The Board's control is indeed dependent upon the Council's acceptance of the Exchequer grant,² as the grant is dependent upon the Council fulfilling the requirements of the Board. But the grants are too substantial to leave it open to a rural council to renounce

¹ Local Government Act 1894, sec. 15.

² Half the medical officer's salary.

them for the sake of asserting independence of the Board. Lastly, as highway authority a rural council must employ a surveyor; but the office may be combined with that of inspector of nuisances.

The finance of rural administration is governed by principles which have already been developed in chapters on municipal and urban administration. The Act of 1894 generally treats of "District Councils," and the main features of urban and rural district finance are therefore

not merely similar, but the same. Accordingly Finance. it is unnecessary to repeat what has been said in the previous chapter regarding the position of the treasurer, the framework of the district rate, and the supervisory powers exercised by the auditors of the Local Government Board over expenditure, and by the Board itself over borrowing. Our only concern is in peculiarities which distinguish rural from urban finance. These peculiarities centre in the revenues and their organisation, which again are the direct result of a real dissimilarity in the social texture and economic conditions of these two types of community. Always in the eyes of the law, and usually also in fact, an urban district is inhabited by a compact and populous community with no great diversity of financial interests so far as the ordinary purposes of local government are concerned. Its revenues, therefore, are conveniently accumulated in one fund, and raised by one rate levied uniformly over the whole area. It is quite otherwise with the large and sparsely populated rural district. An aggregation of scattered villages, with different economic interests and few purposes in common, cannot fairly be subjected to a single and uniform system of taxation. Many of the inhabitants have no artificial water-supply and no system of drainage, and cannot be expected to contribute to conveniences which they do not enjoy. Why should they pay for the necessities of their neighbours? It is scarcely arguable that a village with a clear stream should help to defray the cost of a reservoir for another village possibly miles away, merely because both elect members to the same rural district council. Even in an urban district or municipality, as we have seen, provision has been made by the Legislature for levying special district rates in certain special circum-

stances,¹ lest a rule in itself good should become rigid and cause occasional injustice; and the same object may be attained by private Bills and provisional orders. In rural districts, however, the conditions of life are so different that the principle of a single uniform rate for all purposes is not applicable. There is no local district whose authority has so few general district purposes; for of those things which are of common interest, some are absorbed by the parish and some by the County Council.

That being so, the first care of the Legislature in providing a financial basis for rural sanitary authorities was to make a distinction: "The expenses incurred by a rural authority in the execution of this Act shall be divided into general expenses and special expenses."² To explain the important distinction hereby established, it will be most convenient to follow the words of the Public Health Act, which are not so remote from the common dialect as to require translation:—

General expenses (other than those chargeable on owners and occupiers under this Act) shall be the expenses of the establishment and officers of the rural authority, the expenses in relation to disinfection, the providing conveyance for infected persons, and all other expenses not determined by this Act or by order of the Local Government Board to be special expenses. . . . *General expenses* shall be payable out of a common fund to be raised out of the poor-rate of the parishes in the district, according to the rateable value of each contributory place in manner in this Act mentioned.

Thus far section 229 of the Public Health Act 1875. The Local Government Act of 1894 (sec. 29) adds that "Any highway expenses shall be defrayed as general expenses." Special expenses are defined by section 229 of the Public Health Act as follows:—

Special expenses shall be the expenses of the construction, maintenance, and cleansing of sewers in any contributory place within the district, the providing a supply of water to any such place, and maintaining any necessary works for that purpose, if and so far as the expenses of such

¹ Cf. previously pp. 137-138, and Public Health Act 1875, sec. 319. Cf. sec. 207.

² On the expenses of a rural district council and the means by which they are to be defrayed, see Public Health Act 1875, secs. 229-232, and Local Government Act 1894, sec. 29.

supply and works are not defrayed out of water rates or rents under this Act, the charges and expenses arising out of or incidental to the possession of property transferred to the rural authority in trust for any contributory place, and all other expenses incurred or payable by the rural authority in or in respect of any contributory place within the district, and determined by order of the Local Government Board to be special expenses. . . .

Special expenses shall be a separate charge on each contributory place.

Every parish or special drainage district within the rural district is "a contributory place." The mode of raising expenses from a contributory place is provided by section 230 of the Public Health Act 1875, part of which may be cited :—

For the purpose of obtaining payment from the several contributory places within their district of the sums to be contributed by them, the rural authority shall issue their precept to the overseers of each such contributory place, requiring such overseers to pay, within a time limited by the precept, the amount specified in such precept to the rural authority, or to some person appointed by them, care being taken to issue separate precepts in respect of contributions for general expenses and special expenses, or to make such expenses respectively separate items in any precept including both classes of expenses.

The overseers shall comply with the requisitions of such precept by paying the contribution required in respect of general expenses out of the poor rate of their respective parishes, and with respect to special expenses by raising the contribution required by the levy (in the case of an entire parish on the whole of such parish, and in the case of a contributory place, or part of a contributory place, forming part of a parish, by the levy on such place, or such part thereof, exclusive of the rest of the parish) of a separate rate in the same manner as if it were a rate for the relief of the poor, with this exception ; (namely),

That the owner of any tithe, or of any tithe commutation rent-charge, or the occupier of any land used as arable, meadow, or pasture ground only, or as woodlands,¹ market gardens, or nursery grounds, and the occupier of any land covered with water, or used as a canal or towing path for the same, or as a railway constructed under the powers of any Act of Parliament for public conveyance, shall, where a special assessment is made for the purpose of such rate, be assessed in respect of one-fourth part only of the ratable value thereof, or where no special assessment is made, shall pay in respect of the said property one-fourth part only of the rate in the pound payable in respect of houses and other property.

¹ Add after "woodlands" the words "orchards" and "allotments" ; see the Public Health (Rating of Orchards) Act 1890 and the Allotments Rating Exemption Act 1891.

By later legislation, however, an important modification is introduced. Under the above section (230) of the Public Health Act the expenses under an order of the Local Government Board had to be defrayed out of a rate not equally assessed—certain properties being assessed at one-fourth only. Now, by the Local Government Act of 1894,¹ the Board may direct that the special expenses be raised as general expenses,—that is to say, out of an equal rate to which all properties will be assessed at their full value. In consequence, however, of the Agricultural Rates Act,² agricultural land is assessed at half its value only, the deficit being made up by an exchequer contribution.

The rural district council, as we have seen, does not collect rates for itself, but obtains its local revenues by precepts issued to the overseers of its respective parishes. It is not necessary in this chapter to discuss further the relations of a rural district council to the County Council, as these have already been noticed,³ while its relations to parish councils will be considered subsequently.⁴ The administrative and financial powers exercised by the Local Government Board over urban and rural district councils alike have already been described in the previous chapter.

¹ Sec. 29 (b).

² Passed in 1896, and renewed for four years in 1901.

³ See p. 75 *et al.*

⁴ See p. 195 *et al.*

PART IV

PARISH COUNCILS AND PARISH MEETINGS

INTRODUCTION

THE PARISH AND ITS GOVERNMENT¹

THE idea of creating corporate bodies for the administration of parishes received its first legislative expression in the Local Government Act of 1894. How far that Act, popularly known as the Parish Councils Act, should be regarded as a reversion to an earlier system of local government, whether it can be derived from the Germanic

¹ The literature of Parish Councils is naturally associated with the Act of 1894, or with the movement which preceded and led up to it. Many popular handbooks have been issued as guides to parish councillors; but the best legal commentaries are those of Jenkins and of Macmorran and Dill. The Act is not very clear in its arrangement, and the device of legislation by reference which was adopted to facilitate its journey through Parliament makes many parts of it unintelligible to lay readers. General accounts and description of parochial government may be found in Jenks, pp. 19-53; Blake Odgers, pp. 35-68; Wright and Hobhouse, pp. 1-8; Vauthier, chap. v.; Arminjon, chap. ii.; cf. also Mr. Sidney Webb's Lectures reported in the *Municipal Journal* for 1899 (November and December). In this chapter, besides reports of Parish Council meetings and other information derived from newspapers and reviews, many pamphlets have been consulted, among which Fabian Tracts, 58, 62, 63, and *Reports of the English Land Restoration League, 1893-1897*, may be particularly mentioned. For the general history of the subject and of English land laws, cf. Maitland and Pollock's *History of the English Law*, 1898; Gneist, *Englische Verfassungsgeschichte*, 1882, and *Self-Government*, 1871; Brodrick, *English Land and English Landlords*; Garnier's *History of the Landed Interest*, i. ii. (1892-93); Lord Edmond Fitzmaurice on the "Areas of Rural Government," in the *Cobden Club Essays*, 1882, p. 117 sqq.; Thorold Rogers' *Economic Interpretation of History*, 1894, and his *Six Centuries of Work and Wages: A History of English Labour*; Joseph Arch: *The Story of his Life*, told by himself, 1898; Hasbach, "Die Englischen Landarbeiter," in *Schriften des Vereins für Socialpolitik*, 1894.

elements in the ancient constitution of the country, has already been discussed in our historical survey in connection with the political and social factors which finally led up to this, the last important chapter in the reconstruction of Local Government in England, the most recent step in the long march of administrative reform of which the first was taken just fifty years before. The constitution of the new Parish Councils is for the most part copied from the models already adopted in municipalities, counties, and districts, but with certain substantial modifications, which were required to adapt the received pattern of representative democracy to the smallest unit of local government.

It is to be observed that the new organisation of parochial government was not accompanied by a complete destruction of the old. Originally the parish and its organisation were purely religious. With this a civil organisation was gradually interwoven, and the civil work was placed under the control of the Justices of the Peace.¹ The Church, however, did not lose its hold; and the system of parochial government which prevailed in England from the end of the sixteenth century was a remarkable compound of Church and State. Indeed, the Church and not the State gave parochial

Parochial
government
universal,

government that universality which has made it the elementary area of local government in England. The whole kingdom had been mapped out into parishes by the Church, and consequently the whole kingdom, town and country alike, was covered by a parochial organisation for civil as well as for ecclesiastical purposes.

If we except a few "extra parochial places" (old exemptions inherited from feudal law, which were almost if not entirely put an end to by the legislation of the nineteenth century), there is not a spot of English ground which is not theoretically and actually parochial; and consequently there is no inhabitant

¹ In saying this we do not mean to imply that the parish as an area was an entire invention of the Church, or that Archbishop Theodore (see note, p. 164) worked without reference to such civil organisation as then existed. In most parts of the country there were small civil areas, commonly called townships. These the Church took, severally, or in groups, and called parishes. The reason why the parish became the local area for poor relief is that until the reign of Elizabeth poor relief was a religious function. The State therefore took over the area with the function.

of England who is not in some way subject to parochial government. Apart from the distinction between "common," or "open," and "select" vestries, such parochial government as existed before 1894 was not only universal, but uniform. It performed the same functions, under the same forms in town and country alike. The legislation of 1894 put an end to the uniformity, though not to the universality, of parochial government, by drawing a fundamental distinction between urban and rural parishes.¹ In rural parishes the Legislature has taken away from the vestry its civil powers, and transferred them to the parish council or parish meeting. In urban parishes, however, the vestry remains, or may remain, with its civil as well as its ecclesiastical functions. Thus the smallest areas of local government in England fall into two classes—urban and rural. In the former the old machinery is left standing, an isolated survival, ill-fitted for its work, and not likely to resist the encroachment of the more efficient and democratic bodies which govern urban and municipal districts. In the latter a new parochial authority has been created in touch with the superior rural authorities. We shall accordingly describe first, and at most length, the rural parishes with their new and vigorous organisations, reserving the urban parishes with their decaying vestries for less detailed treatment in a later chapter.¹

but no longer
uniform.

Urban and rural
parishes.

¹ P. 203 *sqq.*

CHAPTER I

THE PARISH AS AN AREA OF LOCAL GOVERNMENT¹

THE Parish Councils Act of 1894 gave a new form of local government to every "rural parish,"—that is to say, to "every parish in a rural sanitary district."² It will be convenient, however, to enlarge upon this definition in order to make its meaning perfectly clear. There are few expressions in what may be called the territorial terminology of English law so puzzling, because they have been used in so many senses, as the word "parish." Of Greek origin, the word "parish" was first used to designate the sphere of a priest, the smallest of the ecclesiastical areas into which the Saxon kingdoms were divided in the seventh and eighth centuries.³

After many transformations, which need not be recounted here, we find in the middle of the nineteenth century that the word "parish" had four distinct meanings, representing more or less distinct areas: (1) the civil parish; (2) the ecclesiastical parish; (3) the poor-law parish; and (4) the highway parish. The two first were originally identical, nor can they be dis-

¹ See the Local Government Act of 1894 (56 and 57 Vict. c. 73), Part III. secs. 36-42.

² Local Government Act, 1894, sec. 1 (2).

³ "The work of organisation was undertaken by Archbishop Theodore. . . . In Theodore's time there was little between the bishop of a kingdom and the priest whose sphere was a township, and accordingly priest and township were by him treated as natural correlatives. And as the early missionaries were often at least as much Greek as Latin (Theodore himself came from Tarsus in Macedonia), it is no wonder that the township came to be called by ecclesiastics a *parish*—that is, the dwelling-place, *παροικία*, of a priest" (Jenks, *Local Government*, pp. 20, 21). Cf. Maitland and Pollock, *History of English Law*, 2nd edit. vol. i. p. 560 *sqq.*, on the relationship of the village, the township, and the parish.

tinguished under any general ruling of the common law. Even at the beginning of the nineteenth century the civil and ecclesiastical parishes remained, in the large majority of cases, coterminous. At that time there were over 10,000 parishes in England and Wales, exclusive of "extra parochial places." Some of the large parishes, especially in the north of England, were subdivided into their constituent townships or hamlets, but little had been done to remedy the gross anomalies caused by the shiftings of population that had taken place since the introduction of parochial government in the reign of Elizabeth. Indeed, the nineteenth century parish was still in most cases the same, not merely as the Elizabethan, but as the Anglo-Saxon parish. So late as 1876 no less than 1300 of these ancient parishes, as Mr. Blake Odgers points out, had outlying portions wholly detached and scattered about over adjoining parishes. A rearrangement of parochial areas was therefore imperative, both for civil and ecclesiastical purposes: for civil, because, as the needs and expenses of local government increased, these irregularities became highly inconvenient both for local administration and finance; for ecclesiastical, because the zeal of reformers drove the Anglican Church to reorganise and adapt itself to modern conditions.

By the Divided Parishes Acts of 1876, 1879, and 1882, many large parishes were divided, detached portions were merged in the parishes which surrounded them, and boundaries were rectified in many other cases.¹ Under the Local Government Act of 1888,² as we have already seen, the boundaries of parishes were rationalised still further by the County Councils and the Local Government Board, particularly with a view to preventing the overlapping of Local Government areas.³ Between 1881 and 1891 the boundaries of more than 3000 civil parishes were altered and improved. Meanwhile the ecclesiastical parishes were being rearranged on different principles by the Church Building Acts,⁴ and New

Divergence of
the civil parish
from the
ecclesiastical.

¹ *E.g.* where a part of a parish was cut off by a municipal or county boundary, or by a river or branch of the sea. *Vide* Blake Odgers, *Local Government*, pp. 28-29, 44-45.

² Section 57.

³ Local Government Act 1888, sec. 60.

⁴ Thirteen in number between 1818 and 1851.

Parishes Acts.¹ There were, according to the Census Report of 1891, 14,926 civil and 13,780 ecclesiastical parishes in England and Wales, of which only about a third were identical.²

Besides the civil and ecclesiastical parishes, there existed until 1894 the poor-law or poor-rate parish, which extended over the whole country, and had already in the eighteenth century become in some cases distinct from the civil parish, owing to the occasional necessity of making detached or outlying portions of parishes independent areas for the purpose of levying and collecting the poor-rate. A few of these outlying places seem to have acquired by custom the right of appointing separate overseers, and of being separately rated to the poor-rate, and these rights received statutory recognition by an Act of 1819 in all places which had enjoyed them for sixty years. In an official return of 1866 it was pointed out that an area in which a separate poor-rate could be made, or a separate overseer appointed, might "consist of an entire ancient parish, one or more highway townships, a parochial chapelry, a chapelry, a quarter, a hamlet, or some part of an ancient parish which is not known by any of these designations,"—a delightful illustration of the rule of chaos!³

By the Interpretation Act of 1889,⁴ however, the word "parish" means "a place for which a separate poor-rate is or can be made, or a separate overseer is or can be appointed."

Modern
definition of
parish.

A different definition was given in the Local Government Act of 1888;⁵ but as that definition is expressly excluded in the Local Government Act of 1894,⁶ the definition above quoted from the Interpretation Act applies, and there is no longer any distinction between the civil and the poor-law parish. There were also, previously to 1894, in many parts of the country highway parishes, but these were put an end to by the Act of 1894, which also provided, as we have seen, that "highway boards shall cease to exist."⁷ The operation of the Local Government

¹ Five in all from 1843 to 1884.

² Cf. census of 1891. *Final Report*, p. 2.

³ *Vide* Blake Odgers, p. 46; and cf. 1891 Census, vol. ii. p. 281.

⁴ 52 and 53 Vict. c. 63.

⁵ Sec. 100. "A place for which a separate overseer is or can be appointed."

⁶ Sec. 75 (1).

⁷ Local Government Act 1894, sec. 25 (1).

Act of 1894 has also ended or nearly ended another species, the "Burial Acts Parish," which formerly flourished in certain places.¹

The Legislature, then, in creating parochial democracy adopted the poor-law parish, but, it only applied the new system of government to those parishes which are rural—that is to say, lie within a rural district. These, however, were far more numerous, though of course less populous and wealthy. Of urban parishes—that is to say, parishes within an urban district—there were 1803 when the Act of 1894 came into operation, while of rural parishes there were 13,093.* As a rule, of course, in consequence of the general growth of population the tendency has been for urban districts and urban parishes to be formed at the expense of rural districts and rural parishes. But from time to time examples occur of the opposite process. For example, by an order of 1899² the parish of Kirkleatham, in the North Riding of Yorkshire, was divided into two separate parishes, named respectively Coatham and Kirkleatham. The new parish of Kirkleatham was transferred by the order from

¹ The best exposition of the meanings which attached to "parish" before the passing of the Act of 1894 is to be found in the speeches in which Sir Henry Fowler introduced and explained the Local Government Bill in the session of 1893, see Hansard. In the above summary we have omitted the "Land Tax Parish," which has no reference to Local Government, being defined as any town, ward, township, tithing, parish, place, or precinct, for which a separate assessment of Income Tax duties or of Land Tax may be made, or for which any assessor or collector may be lawfully appointed for the purpose of assessing or collecting such duties or Land Tax. See The Taxes Management Act, 43 and 44 Vict. c. 19. According to Sir Henry Fowler there were in the year 1894 6977 highway parishes, with a special organisation for the maintenance of highways. These highway parishes were seldom coterminous with the civil or poor-law parishes. In Shropshire, for example, there were 740 highway parishes, and only 224 poor-law parishes. Cf. Wright and Hobhouse, p. 49, and for the development of special highway authorities and highway areas (districts or parishes), Gneist, *Self-Government*, sec. 138.

² The North Riding of Yorkshire (Kirkleatham, Redcar, and Coatham)—Confirmation Order 1899. It may be added that on the order being carried out, the two councils which divided the territorial spoils (namely, the Rural District Council of Guisborough and the Urban District Council of Redcar) failed to agree upon a financial adjustment, and referred it to an arbitrator under section 62 of the Local Government Act 1888. The arbitrator was a barrister, and was asked to determine the differences between the two councils as regards the property, income, and debts affected by the order, and also "the principles upon which such adjustment if any shall be made."

the Urban District Council of Kirkleatham and added to the Rural District Council of Guisborough; while the parish of Coatham, which formed the remainder of the old urban district thus dissolved, was united in one urban district with the urban district of Redcar.

The distinction between urban and rural parishes involved the authors of the Bill of 1894 in a serious difficulty. For, in spite of all rectifications of frontier, many parishes still remained partly urban and partly rural, and in some cases a parish still lay in more than one county. As we have already seen in previous chapters, the Act of 1894 laid upon County Councils the duty of so revising parochial boundaries that every parish and ("unless the County Council for special reasons otherwise direct") every rural district should henceforward be wholly within the same administrative county. And further, every parish should ("unless the County Council for special reasons otherwise direct") be within the same county (*i.e.* urban or rural) district. When at the passing of the Act a parish was situate in more than one urban district, each part was to be constituted a separate parish unless for some special reason the County Council should otherwise direct. Where a rural parish was coextensive with a rural sanitary district, then, until the district was united to some other district or districts, or the County Council otherwise directed, no separate election of a Parish Council was to be held, but the district council was to serve as the Parish Council.¹

In some cases at the time of the passing of the Act a parish consisted of distinct townships, tithings, or divisions, or included an ancient chapelry. In such cases special privileges might attach to one of these divisions, and accordingly to prevent any injustice it was enacted as follows:—

Where it is proved to the satisfaction of the county council that any part of a parish has a defined boundary, and has any property or rights distinct from the rest of the parish, the county council may order that the consent of a parish meeting held for that part of the parish shall be

¹ See Local Government Act 1894, sec. 36, which contains elaborate provision as regards boundaries, and applies section 57 of the County Councils Act of 1888.

required for any such act, or class of acts, of the parish council affecting the said property or rights as is specified in the order.¹

Lastly, it should be added that by order of a County Council parishes may be grouped for the purpose of contributing representatives to one Parish Council, and by a similar order a group may be dissolved. These, as well as certain other orders, do not require to be submitted to or confirmed by the Local Government Board. But such confirmation is necessary in most cases.² Six months after confirmation by the Local Government Board, orders made under section 57 of the Act of 1888—that is to say, orders affecting boundaries—must “be presumed to have been duly made and to be within the powers of that section, and no objection to the legality thereof shall be entertained in any legal proceeding whatever.”³ These orders are administrative and not judicial. Hence it would seem that a writ of prohibition will not lie against the making of them.³

In accordance with the above provisions a great number of orders were made in all the counties of England and Wales shortly after the passing of the Act, and the simplifications intended by the Legislature were carried out with but very few exceptions in those special circumstances in which County Councils were empowered to “direct otherwise.” Thus a full meaning was given to the expression “rural parish,” to which the constructive part of the Parish Councils Act applied.

By excluding urban parishes the most glaring diversities in the size and population of parishes were got rid of. There are, for example, 19 urban parishes outside London, besides a number of the 191 metropolitan parishes, which contain more than 100,000 inhabitants. Even rural parishes, however, exhibit great diversities of population and area. There are parishes less than 50 acres in extent, and others again of more than 10,000 acres. In 1891 there were 11 parishes without any

¹ Local Government Act 1894, sec. 37. The parish meeting in such a case would be called in accordance with sec. 49.

² Local Government Act 1894, sec. 42.

³ See *Reg. v. London County Council*, L.R. (1893), 2 Q.B. 454. On the same grounds it might be argued that such orders could not be questioned even by *certiorari*. But section 42 evidently regards them as so questionable for six months after the date of issue.

inhabitants at all, 6864 with a population of under 300, and 7813 with from 300 to 10,000 inhabitants. According to the report of the Local Government Board for 1898-99, there were then 13,083 rural parishes, 7364 of which had Parish Councils.¹ Dealing broadly with these diversities, it appeared that parishes might be divided into two large classes—namely, those which were large enough for representative institutions, and those which were not. The Act of 1894 accordingly adopted this classification, and divided parishes into (1) those which were to be governed by a representative body, a Parish Council; and (2) those which were to be governed directly by the inhabitants assembled in a parish meeting. It was explained by Sir Henry Fowler, who, as President of the Local Government Board in Mr. Gladstone's last cabinet, introduced the Bill, that no question of principle was involved in drawing the line between the two classes. He proposed, however, to make a population of 300 inhabitants necessary for the introduction of a representative principle. Parliament adopted the number, but preferred to make the conditions more elastic, so that no hard and fast line is now drawn between parishes. But this subject must be dealt with in our next chapter.

¹ It appears from the speech of Sir Henry Fowler (Hansard, 21st March 1893) that in 1893 rural parishes were graduated as follows:—

About 6000 parishes had less than 300 inhabitants.

“	2500	“	“	between 300 and 500 inhabitants.	
“	2300	“	“	500 and 1000	“
“	1200	“	“	1000 and 2000	“
“	1000	“	“	2000 and 5000	“

CHAPTER II

THE REPRESENTATIVE PRINCIPLE IN PAROCHIAL GOVERNMENT

IN the organisation of rural parishes two main principles have been observed: 1. The execution of the functions conferred upon the new communities by Parliament is entrusted, in the first instance, to the whole body of inhabitants in general assembly or meeting. 2. Where for the better execution of these functions a practical necessity for representative government is made out, then, and then only, a standing committee, called a "Parish Council," must be elected to carry on the ordinary business of the parish. In accordance with these two main principles the Act of 1894 creates two large classes of rural parishes: first, all parishes with less than 300 inhabitants; second, all parishes with more than 300 inhabitants. Only in the latter case is an obligation imposed upon the inhabitants to elect a representative body or Parish Council to manage their affairs. In the former case all parochial business may be transacted by the general meeting of the inhabitants, called a "parish meeting." There shall be, to quote the first sentence of the first section of the Act, "a parish meeting for every rural parish, and there shall be a parish council for every rural parish which has a population of 300 or upwards." That is to say, parish meetings are obligatory in all rural parishes, and in parishes containing more than 300 inhabitants Parish Councils are also obligatory. The Council and the meeting represent two types of communal government, and they are related to one another as two stages in the development of an organism. The idea of empowering the whole community to manage its own affairs is not lost in the second class of larger parishes; for there the parish

meeting remains by the side of the Parish Council endowed with important functions, though the idea has been worked up into a more highly differentiated form. An old principle has thus been restored to the law of the English constitution, and applied to the smallest unit of local government—the principle, namely, that representation is only a means of self-government, and is only entitled to recognition where the direct action of the community is practically impossible.¹

Parish Meeting and Parish Council—these then are the two organs of modern parochial government in rural districts. The first is the primary authority, the most elementary form of communal constitution existing in modern England. It is not a body corporate, but its acts may be signified under the hands and seals of its chairman and the overseers, who are made a body corporate for that purpose, and to hold land on behalf of the parish.² In this indirect way it comes about, that in parishes which have no Parish Council a parish meeting may be regarded as a *ficta persona*, like Parish Councils³ and the other larger corporate bodies which have already been described in this work. In such parishes the inhabitants meet, not to elect, not merely to deliberate, but also to act. The whole community of “parochial electors” is the deliberative and executive organ of the parish. The larger parishes also have their parish meeting, by which some direct share in the government is preserved to the community as a whole. But

The parish as a corporation.

¹ Although it is certainly unhistorical to regard parish meetings as a revival of the old German free community, and to derive them from the “Gemots” of the old townships, yet on the other hand it is incontestable that the open vestry, as it was still found in many places at the beginning of the nineteenth century, was the only genuinely democratic form of local government existing in modern times before the Act of 1835. The open vestry was not an institution transferred from the forests of Germany, but was evolved in the thirteenth and fourteenth centuries by the Church as a popular support. But in so doing the Church undoubtedly built, consciously or unconsciously, upon traditions of Anglo-Saxon law, and thus helped to hand down an ancient idea in a changed form to modern times. Cf. Sidney Webb in *Municipal Journal*, 1899, p. 1199; Blake Odgers, p. 42; Jenks, pp. 22 and 25. Further on the legal history of the parish, cf. Maitland, “The Survival of Archaic Communities,” in the *Law Quarterly Review*, 1893, pp. 226, 227; also Maitland and Pollock, *History of the English Law*, i. p. 618.

² Local Government Act 1894, sec. 19 (6) and (11), and later, p. 182.

³ Local Government Act 1894, sec. 3 (9).

there is a differentiation of functions and a representative body, for the Parish Council is called into being to act as the standing organ for the administration of ordinary parochial business.

But in thus distinguishing rural parishes into two classes for purposes of self-government the Legislature did not forget its traditional policy. Elasticity, as we have seen so often, is a quality of English self-government. The great democratic reforms, which have removed so many anomalies, and developed comparative order out of utter chaos, have left plenty of room for local individuality and initiative. There is no iron hierarchy, no rigid system of logical perfection. Bye-laws, private Bills, adoptive Acts, special district rates, are only a few illustrations of a temper and spirit which pervades the local government of England. The provisions of the Act of 1894, which draw wavy lines of demarcation between parishes with and parishes without Parish Councils, are another striking example of this spirit. The line is movable, though only in the direction of the higher form of government. Had the line been fixed, the question would have arisen why a parish with 300 inhabitants should enjoy a Parish Council, and one of 299 be debarred from the privilege (if privilege it be) of representative government. Not logic, but reason—not rigidity, but elasticity, are required in making provision for the extraordinary diversities of local conditions. An absolutely fixed limit of population could never have served as a rational principle in the formation of local constitutions. The English Legislature, accordingly, adopted the following plan:—1. Every parish with less than 300, but more than 100 inhabitants, is entitled to require the County Council to authorise it to become a parish of the superior sort—that is to say, to elect a Parish Council. 2. Even the very small parishes with less than 100 inhabitants may ask the County Council to authorise them to elect a Parish Council. In this case, however, the County Council has discretion to refuse the application. 3. A County Council has, further, the right at its own discretion to make an order for grouping parishes having less than 300 inhabitants, and of bestowing upon the group so formed a common Parish Council. For such a formation the consent of

Elasticity
of the
classification.

each of the parishes concerned is necessary. The grouping order must give a common name to the group thus formed, it must also arrange for the election, and in particular for the proper distribution of the members of the Council between the component parishes. The act of grouping, however, does not altogether destroy the individuality of the parishes grouped. Each retains the right it previously possessed of holding its own Parish Meeting, and of exercising all those functions which are by law conferred upon the Parish Meeting in parishes possessed of a Parish Council. A grouping order must provide for the appointment of trustees and beneficiaries of charities, and the custody of documents, so as to preserve the separate rights of each parish.¹

The order may even "provide for the consent of the Parish Meeting of the parish to any particular Act of the Parish Council, and for any other adaptations of this Act to the group of parishes, or to the Parish Meetings in the group."²

The common expenses of administration in such a case are not specially provided for in the Act,³ but they are of course distributed between the different parishes of the group in proportion to their rateable value. As the County Council has power to group, so it has power to make an order dissolving the group on the application of the Parish Council, or of the Parish Meeting for any parish included. Orders for making or dissolving groups do not require the confirmation of the Local Government Board, the County Council having full powers given it by section 40 of the Act of 1894. At all times, moreover, when the population of a parish increases so as to justify the election of a Parish Council, the County Council may, on the petition of a Parish Meeting, grant a Parish Council to a parish, where the representative system has not yet been introduced, and may also, in case the population of a parish falls below 200, on the petition of the Parish Meeting order the dissolution of the Parish Council.⁴ As we

¹ Local Government Act, sec. 38 (3); cf. secs. 14 and 17.

² Local Government Act 1894, sec. 38 (1).

³ Any adjustment of property debts or liabilities may be made under sec. 68 of the Act, *i.e.* by agreement.

⁴ Cf. Local Government Act 1894, sec. 39.

have seen in the previous chapter, parts of parishes may have defined boundaries and rights distinct from the rest of the parish, and in such cases the County Council may order that the consent of a Parish Meeting held for such a part shall be requisite for any acts affecting those rights.¹ Parts of parishes often have conditions and interests quite distinct from other parts, and an adoptive Act may be adopted by a part of a parish only. In such cases—that is to say, “where a Parish Council have any powers and duties which are to be exercised in a part only of the parish,” or again, “in relation to a recreation ground, building, or property held for the benefit of a part of a parish, and the part has a defined boundary,” then “the Parish Council shall, if required by a Parish Meeting, held for that part, appoint annually to exercise such powers and duties a committee consisting partly of members of the Council, and partly of other persons representing the said part of the parish.”² Under the Act a Parish Council parish has more functions than a Parish Meeting parish. But additional elasticity is given to the dual system of parochial government by a provision enabling the County Council, on the application of a Parish Meeting, to confer on that meeting *any* of the powers exercisable by a Parish Council. Just as a rural district council may get urban powers from the Local Government Board, so a Parish Meeting may get Parish Council powers from the County Council,—another instance of the Legislature’s anxiety to adapt local machinery to local needs, its readiness to look at a microcosm through a microscope.

Consideration
for local
interests and
local feeling.

From one point of view it may seem remarkable to those who best know the English character, and are informed of that jealous local patriotism which resides in counties and towns, and descends as “parochial feeling” into the smallest area of local government, that any government should have dared to propose so comprehensive and systematic a measure. The difficulties would certainly have been insuperable had the measure been drafted, driven through Parliament and then administered, without regard to local sentiment, without

¹ Sec. 37.

² Local Government Act 1894, sec. 56 (2), cf. sec. 7 (7), and sec. 53 (1).

allowance for local peculiarities, in the spirit of a doctrinaire, and by the methods of a bureaucrat. No reader of the debates of either 1888 or 1894 can fail to be struck by the determination of Parliament not merely to preserve but to strengthen county patriotism and parochial feeling as the principal hope of regenerating country life. It was a happy instinct that entrusted County Councils with the carrying out of the Act in so many of its particulars, and gave a large discretion to an authority untinged by bureaucracy and unfettered by predilections for logical uniformity.

In this chapter we have dealt with the dual system, in which the Act miscalled the "Parish Councils Act" has incorporated the two principles of direct or primary, and indirect or representative government. We have seen that the boundary line which separates the two different classes of parishes is not a rigid or prohibitive barrier, but is cut in various directions by various devices. In the two chapters which follow we shall try to forget the bridges and inspect the two types of parish separately, describing first the smaller one, in which the simpler form of constitution exists.

CHAPTER III

THE CONSTITUTION OF SMALL PARISHES

*Parish Meetings*¹

IN small parishes the Parish Meeting is the organ of government, and in it all the functions conferred by law upon small parishes are concentrated. The Parish Meeting, as we have already pointed out, is simply the legal union of all qualified inhabitants into one body under the form of an assembly meeting periodically. The expression "member" of a Parish Meeting is not known to the law, ^{The constitution of a Parish Meeting.} which merely tells us that the Parish Meeting shall consist of the parochial electors. The terminology of an English statute is too clumsy to provide a proper distinction between the person who, having the same qualifications, is in a small parish the member of a Parish Meeting, whilst in larger parishes he is, in addition, the elector of a Parish Council. But we must take such terminology as the law supplies, however misleading it may be, and the law describes Parish Meetings as follows:—

The parish meeting for a rural parish shall consist of the following persons in this Act referred to as parochial electors, and no others, namely, the persons registered in such portion either of the local government register of electors or of the parliamentary register of electors as relates to the parish.²

The "parochial elector" franchise, as has been explained in another context, is the widest and most liberal known to the constitutional law of England, for by a later section of the

¹ Local Government Act 1894, secs. 1, 2, 4, 5, 7, 11, 13, 14, 18, 19, 45, 49, 88, and Schedule I.

² Local Government Act 1894, sec. 2 (i).

Act of 1894 (which covers district as well as parish elections) a woman is not disqualified by marriage from being on any local government register of electors, or from

Who are entitled
to attend?

being an elector of a Parish or District Council, provided she is not qualified in respect of the same property as her husband. Any man or woman, therefore, whose name is on the Parochial Register is entitled to attend the Parish Meeting and so to assist in managing the affairs of the parish. The Parish Meeting must assemble "at least once in every year," and, in order that labourers may be able to attend, the proceedings shall begin "not earlier than six o'clock in the evening."¹ The statutory annual assembly of the Parish Meeting must be held on 25th March, or within a week of that date. Other meetings may be held when required at any other time; but at the statutory meeting in parishes having a Parish Council, the parish councillors for the

Conduct of
business at
Parish Meetings.

year are elected, and in parishes where there is no Parish Council the chairman of the Parish Meeting is elected. Public notice of Parish Meetings must be given at least seven clear days before, specifying the time and place and business to be transacted, and the notice must be signed by the chairman of the Parish Council or any two parish councillors, or the chairman of the Parish Meeting or any six parochial electors. In a small parish, therefore, the Parish Meeting may be convened at any time either by the chairman or by any six parochial electors. In certain cases, where especially important business is to be transacted, *e.g.* with regard to the establishment of a Parish Council, or the grouping of a parish, or the adoption of an adoptive Act, not less than fourteen days' notice must be given. A Parish Meeting has no power to purchase a room or offices for its meetings, and in small parishes a vestry room or parish room seldom existed before the Act of 1894. Accordingly, where "no suitable public room is vested in the chairman of a Parish Meeting and the overseers, which can be used free of charge," the Act provides that the parochial electors shall be

¹ Local Government Act 1894, sec. 2 (3). The meeting, however, may be postponed to another hour on the following day. The prohibition was dictated by experience, for in the old open Vestry the parson, as chairman, would often summon a meeting in the daytime in order to avoid the presence of the majority of the inhabitants of the parish.

entitled to use at all reasonable times, and after reasonable notice, for meetings and other prescribed purposes—(1) “any suitable room in the school-house of any public elementary school receiving a grant out of monies provided by Parliament”; and (2) “any suitable room, the expense of maintaining which is payable out of any local rate.” In the case of a school the meeting must not clash with school hours, and in the case of rooms used for the purpose of justice or police the meeting must not clash with those purposes.”

Every parochial elector present at the meeting has one vote, and every question is decided by the majority of those present on a show of hands, unless the chairman assents to a poll, or at least five parochial ^{Voting at Parish Meetings.} electors, or half of those present, demand a poll before the conclusion of the meeting. In many cases, indeed, a poll may be demanded by any one elector.¹ Should the votes be equally divided the chairman has a second or casting vote. A poll is taken by ballot—that is to say, by secret voting papers in the manner provided by the Act.² For the purpose of an election, “ballot boxes, fittings, and compartments” belonging to any public authority may be borrowed by the Returning Officer, either free of charge or on conditions prescribed by the Local Government Board.³ The cost of such an election is payable out of the poor-rate, but must not exceed the scale fixed by the County Council. In most small parishes elections are rare, the show of hands being quite sufficient; yet the power to have resort to the ballot is extremely useful in cases where influential but unpopular or undesirable persons seek appointment to any parochial office. In small parishes the Parish Meeting may choose its own chairman, but in parishes which have a Parish Council, the chairman of the Parish Council, if he is present, and is not a candidate for election, is *ex-officio* chairman. In parishes without a separate Parish Council the chairman of the Parish Meeting is to be chosen at the annual assembly, and is to hold office for the year.⁴ He has, of course, the ordinary duty of

¹ See Schedule I., rules 5-7 of the Act of 1894.

² See Local Government Act 1894, sec. 2 (5).

³ Cf. Local Government Act 1894, sec. 48 (6).

⁴ Local Government Act, sec. 19.

conducting business and preserving order, of declaring the result of a vote taken at a meeting, of giving the casting vote, and also of receiving on behalf of the Parish Meeting any notices that may be given.¹ He has power to obtain payment of the expenses of the Parish Meeting out of the poor-rate.² He also acts with the overseers as a corporate body in manner directed by the Parish Meeting.³

We now pass to the sphere of activity which is assigned to the Parish Meeting, under the Act of 1894, in parishes

The functions of a Parish Meeting. where no Parish Council is elected. The powers of a meeting in one of these small parishes are

in some respects, or rather may be in some respects, smaller than those of a Parish Council and Parish Meeting in one of the large parishes. But in order to avoid repetition, it will be convenient to deal with these points of difference in our next chapter, in which will be presented a view of the functions and activities of a Parish Council. Here it will be enough to make one or two specific observations. First, of course, the powers of a Parish Meeting differ widely, according as there is or is not a Parish Council in the parish. But in either case the Parish Meeting has certain functions. The adoptive Acts, for example, can only be adopted by the Parish Meeting whether there is a Parish Council or not. The Parish Meeting also exercises considerable control over expenditure; its consent is necessary to the incurring of expenses or the levying of rates under certain adoptive and other Acts, and a Parish Council requires the consent of the Parish Meeting before it can incur any expense involving a loan or a rate of more than 3d. in the £. Again, no highway in a rural parish may be stopped up, diverted, or declared unnecessary without the consent of the Parish Meeting. An important distinction exists between the two forms of parochial government in regard to the executive. Parish Meetings, unlike Parish Councils, are not allowed to employ paid officers unless, indeed, the power of appointing and remunerating a clerk, which is vested in a Parish Council, is conferred on the Parish Meeting by order of the County Council. The distinction is proper enough, for the business of a Parish Meeting in a small

¹ See Rules in Schedule I.

² Local Government Act, sec. 11 (4).

³ Local Government Act, sec. 19 (6).

parish, and the funds at its disposal, are generally insufficient to warrant the appointment of a paid officer. Besides, its most important functions are executed by the assistant overseer, himself a paid official, who is appointed by the Parish Meeting under the following provision:—

The power and the duty of appointing the overseers, and of notifying the appointment, and the power of appointing and revoking the appointment of an assistant overseer, shall be transferred to and vest in the parish meeting.¹

Hitherto the overseers had been appointed annually by the Justices, on the nomination of the Vestry, and the assistant overseer had been appointed by Justices on the nomination of the Vestry or by the guardians. It will be convenient, however, to defer until our next chapter a description of that part of the work of a Parish Meeting which results from the transference to it of all the non-ecclesiastical powers, duties, and liabilities of the Vestry. For in that respect a Parish Meeting supersedes the Vestry to the same extent as does a Parish Council.²

The representative principle may be said to creep into the organisation even of the Parish Meeting, for the Act provides that a Parish Meeting "may appoint a Committee Power to appoint of their own number for any purposes which, in committees. the opinion of the Parish Meeting, would be better regulated and managed by means of such a committee."³ But all the acts of any such committee must be submitted to the Parish Meeting for their approval. Here, then, we have the municipal form of administration in miniature: the community meets as a deliberative organ, but its work may be done by parish committees acting subject to its approval and supervision.

Some functions of the chairman have already been described. He presides over the deliberations of the community and acts as its representative. But there is also this peculiarity, as we have seen, about the chairman of the Parish Meeting in a small parish, that the corporate existence of the community is attached to him in combination with the overseer. It has already been explained how, under the Municipal Corporations Act of 1835

The chairman of the Parish Meeting and his corporate capacity.

¹ Local Government Act 1894, sec. 19 (5).

² Sec. 19 (4).

³ Sec. 19 (3).

the old idea that corporate bodies could only be created singly by individual acts of the Crown was set aside, the Act declaring that all duly constituted local authorities which complied with its provisions should be regarded as corporations or legal persons. Yet so much of the old materialistic theory of incorporation has survived that it is still difficult, in the eyes of English jurisprudence, to personify a local community as such. To do so it requires "a body corporate" in which the fictitious person is in a certain way visible to the senses. Such a "body" is a representative body, and the inhabitants of a small parish fail to satisfy its conditions, because they have no representative organ. And yet it was absolutely necessary to give the parochial government of a small parish the attributes of a corporate body, including the power to hold real and personal property. So the Legislature hit upon the device incorporating not the Parish Meeting, but the chairman and the overseers:—

The chairman of the parish meeting and the overseers of the parish shall be a body corporate, by the name of the chairman and overseers of the parish, and shall have perpetual succession, and may hold land for the purpose of the parish without license in mortmain; but shall in all respects act in manner directed by the parish meeting, and any act of such body corporate shall be executed under the hands or, if an instrument under seal is required, under the hands and seals of the said chairman and overseers.

The legal interest in all property which under this Act would, if there were a parish council, be vested on the appointed day in the parish council, shall vest in the said body corporate of the chairman and overseers of the parish, subject to all trusts and liabilities affecting the same.¹

The functions of the corporate body created by these subsections are, it will be seen, purely ministerial. The chairman and overseers are simply the servants of the Parish Meeting, and may hold land or gifts of land for the benefit of the inhabitants, just as a Parish Council may do under another section of the Act.² There is no possibility of a "select meeting" being developed under cover of this clause on the model of the old "select vestry."

Drawing the threads of this account together, we conclude that even the smallest local community has now vindicated

¹ Local Government Act 1894, sec. 19 (6) and (7).

² See sec. 8, (1), (2).

its right to a simple and direct form of self-government. In the Parliamentary debates of 1893 the concession of direct powers of government to the inhabitants themselves was repeatedly attacked from the Conservative benches (now concerned to maintain the established system of representative government) as an opening of the door to a *plebiscite* or referendum. But the representative principle is only a device for reducing democratic assemblies to a manageable size, not an abstract ideal, but a second best. Where such assemblies are small enough already, as in the case of a small parish, the Legislature rightly decided that the governors should be the governed. Accordingly, in the smallest unit of local government, and there only, is the authentic voice of democracy heard. Of all units the small rural parish alone possesses popular self-government in the fullest meaning of the term. The inhabitants are themselves the sole organ for the execution of their will. The "general will" expresses itself in a general meeting. But it is only expressed in the province marked out for it by law. In this, as in every other English form of local government, the grand principle is maintained, that administration consists solely in the carrying out of the laws. Local self-government is the free exercise by a community of the powers assigned to it by the Legislature. Every local body moves about in Parliamentary chains.

CHAPTER LV

PARISH COUNCILS¹—THEIR CONSTITUTION AND GOVERNMENT

WE proceed now to describe the higher or more complex type of parochial government as it is found in the larger rural parishes. In these parishes also, as we have said, a Parish Meeting has been instituted. But above and out of the Meeting, like the second storey of a house, is built a permanent body called a Parish Council. The Parish Meeting retains, as we have seen, a few fundamental powers. But as the creation of a Parish Council gives the community a convenient organ of administration, that organ is naturally endowed with all the ordinary functions possessed by Parish Meetings in small parishes, and also with a number of additional powers suitable to parishes which, being large enough to elect a representative body, presumably need more government. The Parish Council may be regarded as the court of first instance, and the Parish Meeting as the court of appeal; for apart from elections the main business of a Parish Meeting in these larger parishes is, as we have seen, the business of approving certain important acts of administration and finance. The rules for constituting and convening a Parish Meeting are, it should be said, the same in a large as in a small parish. The Parish Council consists of from five to fifteen members, who were under the Act of 1894 elected yearly, but are now, in consequence of the Parish Councillors' Tenure Act 1899 (62 and 63 Vict. c. 10), elected every three years. Their number is fixed by the County Council, regard being paid to the population of the parish. The election takes

Constitution of
a Parish Council.

¹ Local Government Act 1894, Parts I. and II. Part IV. secs. 51-59. First Schedule, Part II.

place at the statutory assembly of the Parish Meeting in the spring, and the electors are the parochial electors who have already been described in the previous chapter. All parochial electors (including single and married women on the register of parochial electors) are eligible for the Parish Council. But a parish councillor is not necessarily a parochial elector. Persons having no vote at the Parish Meeting are eligible to serve on the Council, if they have "during the whole of the twelve months preceding the election resided in the parish or within three miles thereof."¹ Nor is this qualification narrowly interpreted. Residence within the prescribed limits need not be unbroken. It must only be sufficiently continuous to satisfy the requirements of the law. A person must possess a sleeping apartment continuously during the prescribed period within the prescribed limits, and must actually have slept there from time to time during the year, and must not have abandoned the intention of returning.²

The disqualifications for the office of parish councillor are the same as those already recited in the case of district councillors. Briefly—infants, aliens, paupers, bankrupts, officers paid by, and persons interested in bargains with, the Council are ineligible. But as the number of persons suitable for the office of parish councillor is often restricted, the Legislature has made the following special exception in their favour, which does not apply to guardians or district councillors:—

Where a person who is a parish councillor, or is a candidate for election as a parish councillor, is concerned in any such bargain or contract, or participates in any such profit as would disqualify him for being a parish councillor, the disqualification may be removed by the county council if they are of opinion that such removal will be beneficial to the parish.³

If any vacancies are left unfilled at the triennial election of parish councillors, retiring councillors who have not been re-elected shall, if willing, continue to hold office. "The

¹ Local Government Act 1894, sec. 3 (1).

² See *Powell v. Guest*, 18 C.B. (n.s.) 72 (in which the Court held that a man has not resided in a borough when he has been detained in a gaol more than seven miles away for a portion of the qualifying period under sentence for an assault without the option of a fine), and later decisions, such as *Beal v. Town Clerk of Exeter*, 20 Q.B.D. 300.

³ Local Government Act 1894, sec. 46 (3).

councillors so to continue shall be those who were highest on the poll at the previous election, or if the numbers were equal, or there was no poll, as may be determined by the Parish Meeting, or, if not so determined, by the chairman of the Parish Council."¹

The procedure and conduct of business at Parish Meetings have been described in the previous chapter. In "Parish Council parishes" the election of parish councillors takes place at the annual meeting of the Parish Meeting in spring, once every three years. A person desirous of becoming a candidate hands the chairman a form (obtainable from the overseers) signed by two electors. If the number of candidates exceeds the number of seats, the chairman must take a show of hands, and any five electors, or a third of those present, may thereupon demand a poll by ballot, which is to take place on the first Monday in April, or—if that is Easter Monday—on the last Monday in March. Such a poll is one of the polls "consequent on a Parish Meeting." The rule of voting is—Every elector one vote, and no more, for each vacant seat. Rules with regard to nominations, the poll, and other matters connected with the election of parish councillors, are framed by the Local Government Board in accordance with section 48 of the Act of 1894.² The general instructions of the Act and the detailed regulations of the order are framed on the municipal model;³ and where a parish is too large to form a convenient electoral area it is divided into wards like a borough. A Parish Meeting or ward meeting for the purpose of electing one or more parish councillors is held in each parish or ward every three years, and a voter may not subscribe a nomination paper, or vote in more than one ward or parish. There is a complete register of parochial electors for each parish, or ward of a parish, and only persons on the register are entitled to vote at a Parish Meeting, or at a poll consequent on a Parish Meeting.⁴ The office of parish councillor is of

¹ Local Government Act 1894, sec. 47 (1).

² See for the last edition of these rules Parish Councils Election Order, 1901.

³ Cf. Local Government Act 1894, sec. 48 (3), dealing with parish elections, which applies (subject to the rules of the Local Government Board) to Parish Councils the law of corrupt practices and ballot belonging to municipal elections (see vol. i. p. 280 *sqq.*).

⁴ Local Government Act 1894, sec. 49.

course honorary, and he is free to resign it at any time by notice in writing to the chairman, and no fine attaches to refusal or resignation of the office. A "casual vacancy" in a Parish Council arises if a councillor dies, resigns, or incurs a disqualification, but not if he merely ceases to be qualified by the removal of his name from the register, or of his place of residence from the prescribed limits. The chairman, however, is an exception, for if he ceases to be qualified he vacates his office. The Act provides for the filling of casual vacancies as follows:—

A casual vacancy among parish councillors, or in the office of chairman of the council, shall be filled by the parish council; and where there is no parish council, a casual vacancy in the office of chairman of the parish meeting shall be filled by the parish meeting; and the person elected shall retire from office at the time when the vacating councillor or chairman would have retired.¹

In short, casual vacancies in a Parish Council are filled by co-option. It is the duty of the chairman, on the vacancy arising, to convene a meeting forthwith, giving due notice of the meeting and its object.² If the vacant office be that of chairman, the duty may devolve on the vice-chairman (if any) or on two councillors. A parish councillor, like a district councillor, vacates office if he is absent for more than six months consecutively from meetings of the Council, unless he is ill, or is for some reason excused by his colleagues.³

After the election (by show of hands or poll) of a Parish Council the statutory meeting of the Parish Council is held on 15th April, or within seven days of that date, *i.e.* on any day between the 8th and 22nd.⁴ At that meeting the Parish Council completes its constitution by the election or re-election of the chairman, who, however, in any case continues in office till his successor is elected. And at the same meeting the Council appoints overseers for the year. In small parishes they are appointed by the Parish Meeting at its statutory

¹ Local Government Act 1894, sec. 47 (4).

² First Schedule of the Act, Part II., rules (2), (5).

³ Sec. 46 (6).

⁴ Parish councillors now go out of office on 15th April every third year, and their places are filled by newly elected councillors. See Parish Councillors (Tenure of Office Act) 1899, 62 and 63 Vict. c. 10. By section 3 (7) of the Act of 1894 thereby repealed, the meeting was to be held on 15th April, or within seven days after.

annual assembly. Every Parish Council is by express provision "a body corporate by the name of the Parish Council, with the addition of the name of the parish¹ . . . and shall have perpetual succession, and may hold land for the purposes of their powers and duties without license in mortmain." A common seal, the usual mark of a corporate body, was not provided for by Parliament, always zealous to impress upon inferior bodies the most rigid economy; but "any act of the Council may be signified by an instrument executed at a meeting of the Council, and under the hands, or, if an instrument under seal is required, under the hands and seals, of the chairman presiding at the meeting and two other members of the Council."

Besides the statutory annual meeting, it is provided (in the first Schedule of the Act) that a Parish Council shall hold not less than three other meetings in each year. Business is transacted in much the same fashion as that of a small municipality or district council. Meetings are usually summoned by the chairman; but if he refuses to do so, a meeting may be summoned by two of the councillors. A Parish Council makes and varies, or revokes, standing orders for the regulation of its own proceedings and business, and also for the proceedings and business of the Parish Meeting by which it is elected. By a rule of the First Schedule every cheque or other order for the payment of money must be signed by two members of the Council, and no business may be transacted at any meeting unless a third of the full number of councillors are present, nor then if that fraction consists of less than three persons. Every question is decided by a bare majority; and if members are equal the chairman has a casting vote. A Parish Council is empowered to appoint committees like a District Council, consisting wholly or only partly of its members, "for the exercise of any powers which, in the opinion of the Council, can be properly exercised by committees." A committee does not hold office beyond the annual meeting next after its appointment, and its acts are subject to the approval of the

¹ "Or if there is any doubt as to the latter name, of such name as the County Council, after consultation with the Parish Meeting of the parish direct."—Local Government Act 1894, sec. 3 (9).

Council.¹ A Parish Council may also combine with one or more parish or district councils to form "a joint-committee for any purpose in respect of which they are jointly interested." A joint-committee is not allowed to borrow money or lay a rate. Its expenses are defrayed by the constituent councils in proportions agreed, or, in case of differences, as determined by the County Council.² Unlike a Parish Meeting a Parish Council has power, "to provide or acquire buildings for public offices, and for meetings, and for any other purposes connected with parish business, or with the powers or duties of the Parish Council or Parish Meeting." In any case the Parish Council and its committees may meet like a Parish Meeting at convenient times in public schools and similar buildings.

It is time to turn from the structure, to the functions of the Parish Council. In all those small parishes in which a Parish Council has been set up, parochial government is divided, as we have seen, between the Parish Meeting and the Parish Council, the functions of the former, though comparatively few, being of a substantial and important character. The work of Parish Councils may be classified under three heads:—

1. The functions transferred from the old parochial authorities.

2. Certain duties connected with public health, highways, footpaths, etc., within the parish.

3. Powers of holding and managing property, and powers conferred by modern legislation for the development of agriculture and for improving the status of agricultural labourers.

Let us take them in order.

1. First, there have been transferred to the Parish Council by the Act of 1894 all the non-ecclesiastical powers previously exercised by the Vestry, except those which are expressly transferred to some other authority.³ It would be difficult

¹ Local Government Act 1894, sec. 56 (1).

² Local Government Act 1894, sec. 57 (4). "County Council" is odd. What if the councils composing the joint-committee are in more than one county?

³ Local Government Act 1894, sec. 6 (1). By the following section (7) the power of adopting any of the adoptive Acts (Lighting and Watching, Burial, Baths and Washhouses, Public Improvement and Public Libraries) is conferred exclusively on *parish meetings* in all rural parishes. In parishes having a Parish Council the Acts once adopted are administered by the Parish Council. The power to elect a highway board is abolished by section 25, and the District Council becomes the highway authority in all cases.

to give an exhaustive account of all the small powers hereby transferred; for they vary, in different parishes, the expression vestry being defined for the purpose in a later section of the Act as "the inhabitants of a parish, whether in vestry assembled or not," including not only open vestries, but "any select vestry either by statute or at common law."¹ Among the minor powers thus transferred to the Parish Council—and, where none exists, to the Parish Meeting,²—may be mentioned the return of the names of persons to serve the office of constable (5 and 6 Vict. c. 109, sec. 3), resolutions to appoint a paid constable (35 and 36 Vict. c. 92, sec. 12), and to rate owners instead of occupiers (32 and 33 Vict. c. 41, sec. 4). The Parish Council—and, where none exists, the Parish Meeting—also inherits "the obligations of the churchwardens with respect to maintaining and repairing closed churchyards wherever the expenses of such maintenance and repair are repayable out of the poor-rate under the Burial Act 1855."³ Above all, "the power and duty of appointing overseers of the poor, and the power of appointing and revoking the appointment of an assistant overseer" in rural parishes, are transferred to and vested in the Parish Council, or, where none exists, in the Parish Meetings.⁴ These powers are of a financial character, for the parish, as we have observed before, has always been the territorial unit for the collection of the poor-rate, and still serves as the basis of the English system of local finance. Some of the functions of overseers as well as their appointment have been handed over. Thus, instead of the overseers the Parish Council is now empowered, if it is aggrieved by the valuation list, and thinks its parish over-assessed to the poor-rate or county rate, to appeal to Quarter Sessions against the valuation list.⁵ Further, the Parish Council is to exercise the old powers previously exercised by the Vestry under various statutes and conditions of providing parish

¹ Local Government Act 1894, sec. 75.

² By section 19.

³ Local Government Act 1894, sec. 6 (1) (b).

⁴ Local Government Act 1894, sec. 5 (1), and sec. 19.

⁵ The Union Assessment Committee Acts 1862 and 1864 provide for appeals. The valuation list is settled by the Union Assessment Committee. The Parish Council, it should be observed, may appear in legal proceedings by its clerk, if it has one, or by any officer or member authorised by a resolution of the Council.—Local Government Act 1894, Schedule I. Part II., rule (16).

books, a vestry room or parochial office, a parish chest, and a fire-engine, fire-escape, or matters relating thereto.¹ Parish property previously held and managed by the Vestry which does not relate to the affairs of the Church, and is not held for an ecclesiastical charity, is also transferred to the Parish Council, as also are village greens, allotments previously managed by the Vestry or churchwardens, or both. A good deal of this property is held under the Enclosure and Allotment Acts of the last four, or five reigns. Powers previously possessed by ratepayers and other persons have also been given to Parish Councils; but these powers are partly sanitary and partly "agrarian," and may therefore be considered under the two following subdivisions of parochial activity. It may be observed, however, before leaving the powers transferred from the Vestry and churchwardens, that the "charities clauses" of the Bill were fiercely opposed and obstructed in Parliament. The clericals regarded this part of the Bill as an attempt to secularise Anglican endowments, and denounced it as "a small disestablishment of the Church." The Parish Councils Act certainly has secularised the parish and parochial life by divorcing it from the parson and churchwardens, and has thus carried on the liberalising process begun by the removal of Dissenters' disabilities and the abolition of Church rates.² But the State is not yet free; for through its so-called voluntary schools, as we shall see later, the Church retains a strong hold over public education, especially in rural districts.³

2. A Parish Council is not "a sanitary authority"; but it is both directly and indirectly concerned with the administration of the laws of public health—directly in three ways:—

(a) It is empowered "to deal with any pond, pool, open ditch, drain, or place containing, or used for the collection of, any drainage, filth, stagnant water, or matter likely to be prejudicial to health, by draining, cleansing, covering it, or otherwise preventing it from being prejudicial to health."⁴ In so doing, however,

Its sanitary
powers.

¹ Local Government Act 1894, sec. 6. The chest is apparently the iron chest to hold registers of births, burials, etc., authorised by 52 Geo. III. c. 146.

² In 1869.

³ A Parish Council or a Parish Meeting is a "minor local authority" under the Education Act 1902 (sec. 24 (2)), and may appoint one manager in six for Voluntary Schools (sec. 6 (2)).

⁴ Sec. 8 (1), (f).

it may not interfere with any private right or with the sewage or drainage works of any local authority.

(b) Parish Councils may "utilise any well, spring, or stream within their parish, and provide facilities for obtaining water therefrom, but so as not to interfere with the rights of any corporation or person" (sec. 8 (1)).

Thus a Parish Council has powers concurrent with, but limited by and subordinate to, those exercisable by the Rural District Council under the Public Health Acts. Under the same section it may "execute any works (including works of maintenance or improvement) incidental to or consequential on the exercise of any of the foregoing powers, or in relation to any parish property, not being property relating to affairs of the Church or held for an ecclesiastical charity," and may combine with any other Parish Council for these purposes and contribute to the expenses so incurred. But the subordination of parochial authority is again clearly marked by a provision of the same section,¹ that "nothing in this section shall derogate from any obligation of a District Council with respect to the supply of water or the execution of sanitary works."

(c) A Parish Council may act like a parochial committee as the delegate of a Rural District Council, and exercise within the parish any of the powers so delegated under the Public Health Act.²

The indirect powers of a Parish Council in relation to public health are also important. It may complain to the County Council that the Rural District Council has failed to fulfil its duties to the parish under the Public Health or Highway Acts, and the County Council may then, if satisfied of the default, undertake those duties itself or appoint some person to undertake them. This right of complaint, it may be observed, is the only sanitary power possessed by a Parish Council which is also possessed by a Parish Meeting.³ A Parish Council may also complain, or make representations to the medical officer of health for the district, with regard to unhealthy dwellings or obstructive buildings.⁴

¹ Local Government Act 1894, sec. 8 (3). By section 16, as we shall see, the District Council may be compelled to fulfil its obligations.

² Local Government Act 1894, sec. 15, and Public Health Act 1875, sec. 202.

³ Local Government Act 1894, sec. 16, and sec. 19 (8).

⁴ Local Government Act 1894, sec. 6 (2).

In this way in rural parishes having a Parish Council the whole work of the sanitary authority proper, the Rural District Council,—drainage, the removal of nuisances, the provision of water, and so on,—is brought within the indirect control of the Parish Council, or at least within the sphere of its criticism. To a continental administration this supervision of a larger authority by a smaller may well seem extraordinary. But England knows nothing of that edifice of dictatorial jurisdictions by which the internal government of continental countries is regulated and administered. English self-government applies to large and small areas alike. Generally speaking the same class elects all local bodies. The same parochial elector is as a rule a constituent of the County as well as of the District and Parish Council; and as the Parish Council best knows, and is most interested in, the affairs of the parish, it is natural that it should possess a power of complaint when its affairs are mismanaged or neglected by the larger district authority.

As it is not a sanitary authority, though it has sanitary powers, so the Parish Council is not technically a highway authority, though it has a variety of highway powers. Thus the Parish Council may represent to the District Council that any public right of way in the district, or in an adjoining district, has been unlawfully stopped or obstructed, or that any roadside waste within the district has been unlawfully encroached upon. If the District Council will not or does not act, the Parish Council may petition the County Council, and that body may then take proceedings¹ instead of the District Council. The consent of a Parish Council is required for stopping up or diverting highways. By section 13 (2) of the Act of 1894, the Parish Council may constitute itself the footpath authority, and "undertake the repair and maintenance of all or any of the public footpaths" within its parish, except footpaths at the side of a public road. This, like other powers, is curtailed by severe statutory restrictions upon expenditure.

¹ Either summarily under the Highway Act of 1835 (sec. 72) or the Highway Act 1864, or by indictment or by injunction. See Local Government Act 1894, sec. 26 (4).

3. This brings us to the *third* and last group of powers—those concerned with land, and especially with allotments for small culture.¹ A Parish Council may provide land for public walks and recreation grounds, may regulate by bye-laws open spaces, village greens, and public walks, and may also acquire by agreement public rights of way. If they are unable to acquire land by agreement on reasonable terms they may ask aid from the County Council with a view to

allotments. compulsory purchase. Besides having the right to acquire, hold, and manage property in land and buildings for certain purposes, a Parish Council “may let, or, with the consent of the Parish Meeting, sell or exchange,” any such property. But “the power of letting for more than a year, and the power of sale or exchange, shall not be exercised in the case of property which has been acquired at the expense of any rate,” or is or might be applied in aid of rates, “without the consent of the Local Government Board.” The sale, exchange, or lease of property not acquired at the expense, or applied in aid, of rates must have “such consent or approval as is required under the Charitable Trusts Acts 1853 to 1891 for the sale of charity estates.”² In other words, the consent either of the Local Government Board or of the Charity Commissioners³ is requisite before a Parish Council can dispose of its property. There is, however, one important exception. Parish Councils do not require the consent of any other authority or person to the letting for allotments of any land vested in them. Of all the powers of

¹ Those powers which arise from the adoption of adoptive Acts by the Parish Meeting have already been referred to in the previous chapter.

² Local Government Act 1894, sec. 8 (2).

³ The Charity Commissioners are a body established by the Charitable Trusts Act 1853 (16 and 17 Vict. c. 137), and it is their duty to supervise all charitable trusts in England and Wales with certain exceptions, such as University Foundations. For their powers to authorise sales, exchanges, and leases of land, etc., see 16 and 17 Vict. c. 137, secs. 24-26, and 18 and 19 Vict. c. 124, secs. 29-39. Parochial charities are very numerous, so that the Charities Clauses of the Bill (Local Government Act 1894, sec. 14) naturally provoked considerable discussion. By that section non-ecclesiastical charities in a parish may, with the consent of the Charity Commissioners, be transferred to the Parish Council, or the Parish Council may add to the governing body without prejudice to the power of the commissioners to settle or alter schemes for the better administration of such charities.

a Parish Council those connected with allotments are perhaps of the greatest practical interest; and there are many rural parishes in which the law, imperfect as it still is, has been brought into useful operation for the benefit of agricultural labourers who are too often miserably housed in cottages to which not even the smallest strip of garden is attached.

Some account has already been given in the chapter on Rural District Councils of the means by which allotments may be provided. Let us now see how Parish Councils stand in regard to this matter. In the first place, supposing they are in possession of land not entrusted to them for any other purpose, they have perfect freedom to parcel it out and let it. Secondly, they may obtain land by agreement, *i.e.* they may induce landowners in the parish to sell or lease lands to them. Unfortunately the land laws are still unfavourable to the sale of small parcels of land. Moreover, large estates are often so tied up that the life owner cannot agree to sell. And again, even if he has the power, he often has not the will. Thirdly, then if the Parish Council cannot either hire or purchase land on reasonable terms, it may call upon the Rural District Council to act. In that case the District Council may purchase, and the Parish Council may manage, the allotments. If the District Council fail to do anything, the Parish Council may make representations to the County Council. And if the latter after inquiry is satisfied that land is needed, and that suitable land cannot be acquired by voluntary means at a reasonable price, the County Council may buy land for the Parish Council. If the County Council refuse, there is a further appeal to the Local Government Board, which may overrule the County Council and make an order for compulsory purchase. When voluntary means fail, there is an alternative method to compulsory purchase in compulsory hiring, for which purpose the Parish Council has only to obtain the authorisation of the County Council. The limits set by the wisdom of Parliament to the size of allotments vary curiously; of allotments bought by the District Council no one may hold more than an acre; for land hired compulsorily the limit is four acres of pasture, or one of arable and three

of pasture; but there is no limit in the case of land hired by agreement.¹

The Legislature recognises the great importance to parochial life of the proper administration of parochial charities, and provides, accordingly, that the draft of every scheme relating to a non-ecclesiastical charity, which affects a rural parish, shall be communicated to the Parish Council, and (where there is no Parish Council) to the chairman of the Parish Meeting. And therefore, where there is a Parish Council, the Council

may, subject to restrictions with regard to expenditure and to the consent of the Parish

Meeting, either support or oppose the scheme, either at a local inquiry or by petition to the Chancery Division of the High Court of Justice.² In the same way a Parish Council may, if they have a *locus stāndi* as trustees of the public, oppose a Bill in Parliament by petition or by counsel.

But isolated proceedings, either in the High Court or before a Parliamentary Committee, would be a very severe strain upon the financial resources of almost any Parish Council, and are practically prohibited in most cases by statutory restrictions on expenditure. Of these restrictions the first is that "a Parish Council shall not, without the consent of a Parish Meeting, incur expenses or liabilities which will involve a rate exceeding threepence in the pound for any local financial year, or which will involve a loan."² The second

Statutory
restrictions on
expenditure.

restriction upon the spending powers of Parish Councils is that "the sum raised in any local financial year³ by a Parish Council for their expenses (other than expenses under the adoptive Acts) shall not exceed a sum equal to a rate of sixpence in the pound on the rateable value of the parish at the commencement of the year."⁴ That is to say, under no circumstances, even with the consent of the Parish Meeting, may a Parish Council levy a rate of more than sixpence in the pound, while

¹ Cf. Local Government Act 1894, secs. 6, 9, and 10. An admirably succinct account of the powers of local authorities with regard to allotments will be found in C. J. F. Atkinson's concise *Handbook of Local Government Law* (1902), pp. 13-16, 44-46, and 110-115.

² Local Government Act 1894, sec. 11 (1).

³ *I.e.* the twelve months ending 31st March.

⁴ Local Government Act 1894, sec. 11 (3).

on its own authority it may not levy a rate exceeding three-pence. In the case of smaller parishes with no Parish Council this sixpenny rate is the absolute maximum, as expenses incurred under any of the adoptive Acts have to be included in the calculation.¹ In both classes of rural parishes the expenses incurred under adoptive Acts continue to be raised in the manner provided by those Acts. For example, under the Lighting and Watching Act 1833, and under the Public Libraries Act 1892 (sec. 18), land, as distinguished from buildings, is charged at a proportion only of its full rateable value. Rates under the adoptive Acts are therefore raised and calculated separately, though they are collected along with the general parish rate. And in order that the ratepayers may be informed of the purposes on which their money is being expended, the distinction is preserved in the demand note.

The demand note for any rate levied for defraying the expenses of a parish council or a parish meeting, together with other expenses, shall state in the prescribed form the proportion of the rate levied for the expenses of the council or meeting, and the proportion (if any) levied for the purpose of any of the adoptive Acts (sec. 11 (5)).

To find out the maximum amount of money which might be levied by a Parish Council it would be necessary to take first the produce of a sixpenny rate, and, secondly, to add to that the produce of the maximum rates leviable under the various adoptive Acts, which range from sixpence under the Public Improvement Acts to a halfpenny under the Public Libraries Act. It may be added that in calculating its expenses a Parish Council must include those of the Parish Meeting, which in case of ballots being required may be considerable.

A Parish Council having, as we shall presently see, no power itself to levy a rate, is not a local authority within the meaning of the Local Loans Act of 1875. But it has considerable borrowing powers;² for it may borrow like a local authority under the Public Health Acts, *i.e.*

¹ Local Government Act 1894, sec. 19 (9).

² Subject, of course, to the sums necessary for repayment and interest, not raising the annual expenditure of the council above the limits authorised by the Act of 1894 or the adoptive Acts.

by mortgage on the rates, "except that the money shall be borrowed on the security of the poor-rate and of the whole or part of the revenues of the Parish Council, and except that as respects the limit of the sum to be borrowed, one-half of the assessable value shall be substituted for the assessable value for two years."¹ Besides these statutory restrictions, direct and indirect, upon the amounts which may be borrowed by a Parish Council, the Legislature has devised four distinct "consents" which it is requisite to obtain. First, the expenditure involving the loan must be approved by the Parish Meeting and the County Council. Then, the expenditure having been so sanctioned, the consent of both the County Council and the Local Government Board must be obtained for the loan. Further, any money which a Parish Council is authorised to borrow may be lent it by the County Council.²

The purposes for which a Parish Council may borrow are as follows:—

1. To purchase any land or to build any buildings which the Council is authorised to purchase or build.
2. To carry out any power for which it is authorised to borrow under an adopted Act.
3. For any permanent work or other thing which the Council is authorised to execute or do, and the cost of which ought, in the opinion of the County Council and the Local Government Board, to be spread over a term of years (sec. 12 (1)).

If in spite of all these precautions a Parish Council should borrow or spend illegally, it is liable to be caught in the net of the district auditor, who visits and audits parish accounts every year. The laws of audit for Parish Councils and Parish Meetings are precisely the same as those of an urban district council, subject to the power of the Local Government Board to make special rules.³ Every parochial elector may at all

¹ Local Government Act 1894, sec. 12, which applies the Public Health Act 1875, secs. 233, 234, 236, and 239, to Parish Councils, with the two further restrictions above quoted.

² Local Government Act 1894, sec. 12 (2).

³ Local Government Act 1894, sec. 58, applies the Local Government Board's audit alike to District Councils, Parish Councils, and (in rural parishes where there are not Parish Councils) to Parish Meetings. We have already described

reasonable times inspect and copy "all books, accounts, and documents belonging to or under the control of the parish council of the parish or parish meeting."

In some hundreds of cases every year Parish Councils are completely inactive so far as work involving expenditure is concerned. This we know from the records of the Local Government Board. By an ordinary Parish Council, however, there is a certain amount of expenditure every year. In the small rural parishes into which representative government has not been introduced expenditure is the exception. According to the report of the Local Government Board for 1898-99, there were in England and Wales 7384 Parish Councils and 5719 Parish Meetings in rural parishes having no Parish Councils. Of the former 7076, of the latter only 508, had their accounts revised by the district auditor. That is to say, during the year ending 31st March 1899, 308 Parish Councils and 5211 Parish Meetings had no expenditure to record. Altogether in that year the accounts of 7584 rural parochial authorities were revised, and the audit produced a crop of 345 disallowances and surcharges. The aggregate revenue of these authorities, excluding loans for the same year as ascertained and certified by the auditors, was, £185,259, while the aggregate expenditure was £182,259. In the following year, although the number of spending Councils had fallen to 6887, and of Parish Meetings to 435, their aggregate revenue had risen to £196,863, and their aggregate expenditure to £188,645.¹ These accounts include the sums raised by Parish Councils and Meetings, and paid by them to joint-committees on which they were represented. Of these joint-committees there were 90 in the year ending 31st March 1900. Of the total receipts for that year £133,214 were derived from rates, and £31,786 from rents of allotments, while of the total expenditure £51,896 was under the Lighting and Watching Act, £33,533, under the Burial Acts, and £29,743 for allotments. In the same year the Parish Councils borrowed £35,977, and their

the law of audit in the chapter on Urban District Councils. See for its application to Parish Councils, orders and forms prescribed by the Local Government Board, 20th April 1900.

¹ The contributions of Parish Meetings to these figures in the year ending 31st March 1900 were very small—receipts £1761 (including £940 from rates), and expenditure £1645.

total liabilities (including those inherited from previous authorities) amounted to £168,878, of which no less than £155,365 was incurred under the Burial Acts. In the spring of 1900 the Local Government Board took advantage of its powers under sec. 58 of the Act of 1894, by issuing orders prescribing forms for the permanent use of parish councils and parish meetings in their financial business. By order of the 20th of April (1900) forms of financial statements, notices, etc., are prescribed by parish councils and joint-committees.¹

From parochial expenditure we turn to parochial revenues, of which, as we have seen, the greater part (more than two-

¹ In the schedule to the order of 20th April 1900, a parish council is required to distinguish its receipts as follows :—

1. Contributions from overseers—
 - (a) from poor-rates.
 - (b) from other rates.
2. Contributions from or payments by other local authorities with the name and purpose.
3. Rents of allotments.
4. Burial fees.
5. Other receipts, specifying them.

On the same sheet the rateable value of the parish at the commencement of the year has to be given, and the value of agricultural land must be stated separately from that of buildings and other hereditaments.

On the other, or expenditure side, of the account, payments to joint-committees and other local authorities (1) by precept, (2) otherwise than by precept, are to be specified, and the other items of expenditure have to be set out under the following heads :—

Salaries or other remuneration of officers.

Establishment charges, including the cost of stationery, books, postage, printing, advertisements, audit, stamp, gas and fuel for office, and rent, rates, taxes, and insurance paid in respect of office.

Repayment of loans and interest on loans :—

Principal repaid (including £ out of Invested Sinking Fund).

Interest (including Income Tax).

Payments to Sinking Fund.

Cost of meetings, polls, and elections.

Allotments.

Lamps and other articles for public lighting under the Lighting and Watching Act 1833.

Fire engine and other appliances, and fire brigade.

Footpaths and rights of way.

Commons, open spaces, public walks and recreation grounds, and work connected therewith.

Provision and maintenance of burial grounds and buildings thereon.

Other payments, specifying them.

thirds) is at present derived from rates, and about half of the remainder from the rent of allotments. Parish councils and meetings are not "spending authorities"

scheduled in the Agricultural Rates Act, ^{The revenues} of Parish Councils, and get no grants from the national exchequer.

Consequently, apart from any revenues which they may derive from property, they have to rely upon the ratepayers alone. But they are not rating authorities—that is to say, they have no power themselves to lay and levy rates, but only to have their expenses paid out of the poor-rate. What actually happened is that the parish council calculates every half-year the probable amount of the expenditure, and makes orders upon the overseers from time to time as the money is required. The overseers pay the sums out of the poor-rates, and, if necessary, make a rate to meet the orders. If a rate is required a demand note is served on each parochial ratepayer. The demand note in each case distinguishes between parochial and other purposes, and also shows on the face of it how much is demanded in respect of the general expenses of the parish meeting or council, and how much under adoptive Acts.¹ The overseers then retain their old duties and functions with respect to rates; but they, as well as the (paid) assistant overseer, are appointed by the parish council (or parish meeting), which is thus enabled to control parochial taxation as well as parochial expenditure. It is not absolutely necessary that there should be an assistant overseer in every rural parish. The duty of preparing the Valuation List may be performed by the unpaid overseers—that of collecting the poor-rate by a collector of poor-rates. But as a rule there is an assistant overseer who performs these two functions, and he may be appointed clerk to the parish council, and in that case his work as clerk "shall be taken into account in determining his salary." If there is no assistant overseer the parish council "may appoint a collector of poor-rates, or some other suitable person, to be their clerk, with such remuneration as they may think fit." The appointment of a salaried clerk is only possible in rural parishes having a parish council, and then only if the council does not avail itself of the power

¹ See Local Government Act 1894, sec. 11 (5). The exact form of the demand note is prescribed by the Local Government Board.

given under the Act to appoint "one of their own number to act as clerk of the council without remuneration." A parish meeting has no clerk, nor indeed is there any legal obligation upon a parish council to have a clerk at all, paid or unpaid.

PART V

THE LOCAL ADMINISTRATION OF POOR RELIEF AND EDUCATION

CHAPTER I

THE LOCAL ADMINISTRATION OF THE POOR LAW¹

IN our historical chapters we showed how the system of Poor Law administration founded by the Elizabethan Poor Law was important not only in itself, but as the trunk out of

¹ As the present chapter does not profess to give a detailed description of the details of Poor Law administration it is not necessary to append an exhaustive survey of Poor Law literature. The standard legal work, Archbold's *Poor Law*, a comprehensive digest, is always kept up to date. Burns's *Justice of the Peace* is another standard work. There is no branch of English government to which German writers have paid so much attention. Among these Aschrott stands first with his *Das Englische Armenwesen in seiner historischen Entwicklung und in seiner heutigen Gestalt* (1886). See also the supplementary volume entitled *Die Entwicklung des Armenwesens in England seit dem Jahre 1835* (1898). In Gneist's *Self-Government*, chap. x., will be found a survey of the older literature and material. But the admirable reports of the general inspectors of the Local Government Board, and the Poor Law statistics issued year by year in the annual report of the Local Government Board, furnish in themselves the most complete and satisfactory data. This chapter concerns itself mainly with the present organisation of poor relief as a limb or department of local government, and from this point of view the following books have been consulted:—Fowle's *Poor Law* (1881); Wright and Hobhouse, *Outline of Local Government*, chaps. ii. and vii.; and the *English Poor Laws*, London, 1897, by Miss Lonsdale, herself a Poor Law Guardian, who gives an excellent description of the practical work and methods of administration. Cf. also Mackay, *History of the English Poor Law and Public Relief of the Poor*, and Fabian Tract No. 54, *The Humanising of the Poor Law*. For the general Poor Law Orders issued by the Board, see Glen's *Poor Law Orders*, 11th edition, London, 1898. It is one thick volume of 1500 pages, and contains all the general orders in force in 1898. Where doubtful points of law are involved, these orders usually reproduce the words of the statutes to which they apply, and leave the Courts of Law to do the work of construction and interpretation, cf. a later chapter on the Poor Law Administration of the Local Government Board.

which other branches of local administration grew, and how consequently the reform of Poor Law administration soon drew after it a general reform of local government. The Poor Law Amendment Act of 1834 must therefore be regarded as the origin of a more general reconstruction; for that Act, together with the Municipal Code of the following year, established the principles upon which the modern system of local government was gradually built. It was in the management of pauperism and the organisation of

poor relief that modern ideas of administration were first applied and tested. Through the successful operation of the Poor Law Board the public

mind was slowly brought to realise the advantages of central administrative control. The constructive legislation of 1888 and 1894, which completed the edifice of local self-government in provincial England, has developed and modified the ideas of the Poor Law reformers, and has left its mark not only on counties and parishes, but upon the constitution and area of Poor Law authorities. In short, the two types of local government established in 1834 and 1835—the Poor Law type and the municipal type—have naturally acted and reacted upon one another. The codes of public health, of county and of parish government, represent many compromises and accommodations between the two types. In spite of all changes, the two principal features of the new organisation, thought out and finally carried by the Poor Law reformers in 1834, have lasted down to the present day.

1. The areas for the administration of the Poor Laws are formed on considerations of convenience without regard to historical associations. Instead of adopting the town and county, or retaining the parish, the Poor Law reformers aimed at a new middle term and devised the Union—a combination, or union, of parishes.

2. The administration of the Poor Laws is uniform. Of all the statutes relating to local government Poor Law statutes are the least permissive in character. There should, it is held, be vested in the local authority entrusted with the relief of the poor a minimum of discretionary power. The pauper must not be pampered in one Union and starved in another. Every statutory or administrative rule should be rigidly carried out in

every part of the kingdom. To this end a Central Board was established whose extensive and far-reaching powers are exercised by means of rules and orders of a general or particular character, dealing as far as possible with every department and detail of Poor Law administration.

At the beginning of the twentieth century Poor Law administration retains these two features, which it owes to Bentham and his disciples.¹ The Union is still the territorial unit; the Guardians are still the local authority; and their administration of the Poor Laws is still guided and controlled by a department of the central government, though that department is no longer exclusively occupied with Poor Law affairs. It is not for want of criticism that the main principles established in 1834 have stood unshaken even by the sweeping democratic reform of 1894.² Many philanthropic people would like a far more flexible system, admitting of local variations in the treatment of the poor, and encouraging experiments. Many more would prefer a larger area, and would welcome the absorption of Poor Law administration in municipal and county government. In the present chapter, however, it is proposed to describe rather than to criticise. The powers of the central authority will be treated in a later part of this volume, though they are too intimately associated with those of the Guardians to be altogether

¹ A third, the *ad hoc* principle (which has been shaken by the establishment of the Local Government Board and by the Education Act of 1902), is also a legacy of Bentham, who held that efficient and scientific government involves the creation of special bodies, central and local, for every branch of administration. The idea was borrowed—too readily it may be—from the principle of the division of labour so familiar to economists. Bentham regarded Adam Smith as his master, and spoke of “the weapons which you (Smith) have taught me to wield, and with which you have furnished me” (cf. Rae’s *Life of Adam Smith*, p. 423, and Bentham’s *Works*, iii. 21).

² The reform of 1894, which made Boards of Guardians completely democratic, was accompanied by a radical and socialist agitation for humanising and decentralising poor relief. The Local Government Board was accused of red-tape, and the workhouse of barbarity. The comforts (and cost) of workhouse life have been improved, but the agitation against the Board, though vigorously supported by the anti-vaccinationists (assisted by a new “conscience” clause in the Vaccination Act of 1898), has had no success. Nevertheless, the democratic Boards of Guardians have shown themselves more susceptible to popular cries than the old, and have often waged war against the Board by encouraging remissness or admitting unauthorised relaxations in the severity of the rules for relief. For a German view of this conflict, cf. Aschrott’s *Entwicklung des Armenwesens in England seit 1835*, p. 22 sqq.

excluded from a picture of the local organisation. But the main features of that picture will be purely local—the area and the constitution of the local authority, and lastly, its sphere and modes of activity.

The Union, which, as we have seen, is still the territorial basis of Poor Law administration, is a union of parishes grouped without reference to other local areas. Thinking merely of the convenience of the area for its own specific purpose, the commissioners of 1834 would seldom stretch a point in order to make the boundaries of the Union conterminous with those of a borough or county. But the inconvenience of this narrow doctrine of convenience was soon felt; and since 1846, when power was given to the central authority to alter at discretion the size and boundaries of Poor Law Unions, many changes have been made in the principles and practice of Poor Law geography.¹ The larger doctrine—that uniformity of areas formed for different purposes of local government is in itself desirable and convenient—was distinctly approved and extended by the Acts of 1888 and 1894. Yet the effect of those Acts has been so partial and imperfect that the Poor Law Union still remains an individual and independent area, out of harmony with the general scheme of local government. That many minor irregularities have been removed by Orders and private Acts was shown in previous chapters. Some municipal councils have effected large savings to the ratepayers by the formation of a Poor Law Union conterminous with the borough.² Lastly, as

The Poor
Law Union.

¹ By the Divided Parishes Act of 1879 (42 and 43 Vict. c. 54) the Local Government Board was empowered to unite Unions for any Poor Law purpose into so-called "Union Counties," which, however, have no connection or correspondence with administrative counties. Such combinations are governed by a joint-committee. The Local Government Act of 1888 (sec. 58) gave the central authority the further power to provide that any Poor Law Union situate in more than one county shall "continue to be one Union for the purposes of indoor paupers or any of those purposes, and shall be divided into two or more Poor Law Unions for the purpose of outdoor relief." This power is given to County Councils also by section 36 (6) and (11) of the Local Government Act of 1894.

² The following is a complete list of the boroughs which were coextensive with a Poor Law Union in 1898:—County Boroughs—Barrow-in-Furness, Bradford, Bristol, Devonport, Exeter, Ipswich, Leicester, Norwich, Plymouth, Portsmouth, and Reading. Non-County Boroughs—Bury St. Edmunds, Cambridge, Chichester, Colchester, and Gravesend. There were also four boroughs

the result of public health legislation, the rural union was adopted as the rural sanitary district. Almost every rural union is now a rural district, and in such cases the Poor Law and rural sanitary authority, though still legally distinct, are practically identical.¹ But Parliament, deterred by financial and other considerations, has not as yet ventured to adapt the area and constitution of Poor Law bodies to the general scheme and economy of local government. So far as non-rural Unions are concerned, in addition to the general power of modifying local boundaries possessed by the Local Government Board, Parliament has entrusted two or more County Councils with the power of adjusting by order (to be confirmed by the Local Government Board) the boundaries of any Union which lies in more than one county. These provisions have been put into constant operation for the purpose of carrying out the principle, laid down in the Act of 1894, that the area of an inferior local authority may not cut the county boundary. Nevertheless, there still are, or recently were, out of 649 Unions 161 in two counties, 26 in three, 2 in four, and 1 Union in five counties. Each of the remaining 459 lay entirely within a county area.²

While the territorial basis laid for the Poor Law in 1834 suffered comparatively little change in the rest of the century, important alterations were made in the constitution of the local authorities. These are the Boards of Guardians, and, in subordination to them, the overseers, assistant overseers, and rate collectors are paid officers acting under their directions. Now by the Act of 1894, as pointed out in previous chapters, overseers are appointed by the Parish Council or Parish Meeting, and a radical alteration has been effected in the constitution of Boards of Guardians. First, the provision which enabled Justices of the Peace resident in the Union to act *ex-officio* as Guardians was

Constitution
of Poor
Law authorities.

(Accrington, Bacup, Haslingden, and Rawtenstall) which together formed one Union, called the Haslingden Union.

¹ Except for the official guardians.

² Cf. First Report of the Royal Commission on Local Taxation (1899), p. 15. But of the 161 Unions situate in two administrative counties (or partly in an administrative county and partly in a county borough) there were 85 in which the rateable value of the smaller part was less than 25 per cent of the whole Union, and the average of which was only 9·6 per cent.

repealed. Thus the Guardians became purely elective bodies. Secondly, a democratic franchise of parochial electors was substituted for the old class franchise with its plural voting. Thirdly, the property qualification for the Guardians themselves, according to which as many as six votes fell to the richest ratepayers, was abolished,¹ and every parochial elector became possessed of a general, equal, and direct franchise.

Accordingly Boards of Guardians are now thoroughly representative and democratic bodies. They may be distinguished into three classes—urban (or municipal), rural, and mixed. Only in the first is there a special election of the whole Board. In rural Unions, and in the rural parishes of mixed Unions, rural district councillors serve as guardians. But even in the rural Unions, where every councillor is a guardian and every elected guardian a councillor, the distinction between the two bodies and their work is preserved. In the urban portions of mixed districts, as in urban Unions, there is an *ad hoc* election of guardians which is regulated by an order of the Local Government Board, issued in pursuance of the Act of 1894, and similar to that governing the elections of district councillors. Guardians are elected for three years, a third retiring yearly. But a County Council may, on the application of a Board of Guardians, issue an order to provide that the whole body shall retire every three years. The proportion of guardians to parishes used to be settled by the Local Government Board upon the principle that every parish of more than 300 inhabitants shall elect at least one guardian. Since the Act of 1894, however, the number and distribution of guardians has been fixed by County Councils. It has been observed that the size and population of Unions vary as widely as those of parishes and counties. That of West Derby, in Lancashire, has 444,000 inhabitants; those of Reeth (Yorks) and Welwyn (Herts) have only 3200 and 2300 inhabitants apiece.

The first duty of a duly constituted Board of Guardians is to choose a chairman, who may be a woman, and must be either a guardian or a person qualified to be a guardian. A vice-chairman may also be chosen in the same way. The Board may further co-opt two additional members from the

¹ Cf. the chapter on Rural District Councils.

number of persons qualified to be elected. Thus a Board of Guardians may contain four co-opted, or indirectly elected, members. So that in a rural Union, where every district councillor is a guardian, every guardian is not necessarily a rural district councillor; for of course the co-opted members may not sit as district councillors. *

To pass from the constitution of a Board of Guardians to its sphere of activity is to plunge into an immense subject, of which only the more prominent points can be sketched, for a description of the Poor Laws and their administration lies far beyond the scope of these volumes. Generally speaking, a Poor Law authority is concerned with the whole business of pauper management and poor relief ^{The work of Poor Law Guardians.} as laid down in the Act of 1834 and its amending statutes. These statutes, which sadly need codification, are long and complex; but their length and complexity has been enormously drawn out by the sub-legislative activity of the Local Government Board. Ever since 1834 Poor Law Orders have been constantly issued by the central authority; and those which remain in force form a huge body of rules, which have to be carried out by the local authorities. These Poor Law Orders are of two kinds—general and special. The former apply to all Poor Law authorities, the latter only to the one, or more, specified in the order itself. The erection, maintenance, and management of workhouses, asylums, schools, and other necessary institutions are duties laid directly upon the local Boards of Guardians. But the way in which these duties are to be carried out is prescribed with the utmost minuteness in the orders of the Board. Such freedom as the local authority possesses is exercised in the everyday work of applying these rules and regulations to concrete cases. The central authority does not attempt the impossible task of interfering in the ordinary course of administration. Individual applications for relief are dealt with by the Guardians; and the Board only intervenes in particular cases if complaint arises. It is in their management of workhouses, infirmaries, and schools that the work of the Guardians is most effectively supervised and controlled by the central authority. The important task of deciding how applications for outdoor relief shall be dealt with—which granted and which

refused—devolves upon the local authority—except that a hard-and-fast rule has most rightly been laid down prohibiting the granting of outdoor relief to able-bodied workmen. It is not to be supposed that amid the growing intensity of local government the work of the Guardians has stood still. With the increasing wealth of the nation and a rising standard of life, the line of pauperism is drawn higher than was the case fifty years ago. The standard of comfort within the workhouse has risen with a rapidity which threatens the ratepayer, and alarms the true disciples of Bentham and Chadwick. But a good deal of the increasing expenditure has been laid out upon medical and educational institutions—objects which command general approval, provided that good value is got for the money. In all these matters the influence of the official “expert” is considerable, though Chadwick always complained of the undue subordination in the English Poor Law system of the trained bureaucrat to the untrained members of a local authority.¹ Certainly the sphere of the Guardians is extending in some directions. They are primarily responsible for looking after the destitute sick and infirm in their district, for the maintenance of pauper lunatics, for bringing up and educating pauper children outside the workhouses, for compelling able-bodied paupers who seek the workhouse to work, and for removing paupers not chargeable to the parish to their place of settlement.

In addition to these main purposes of Poor Law administration the Guardians of rural Unions were, until 1894, entrusted with the carrying out of the sanitary code. And Boards of Guardians have still certain duties to perform outside the province of the Poor Laws. They are the authority for administering the Vaccination Acts,² for protecting infants against the abuses of “baby farming,”³ and for enforcing the

¹ Cf. Mr. Thomas Mackay's *Public Relief of the Poor*, London (Murray), 1901, pp. 113, 114, etc. Perhaps Chadwick overestimated the expertness of the average official as well as the inefficiency of the average guardian. There is general testimony to the admirable work performed by many women guardians in all parts of the country.

² See the Vaccination Acts of 1867, 1871, 1874, and 1898. The last, allowing “conscientious” objections, has led to sharp conflicts between Anti-vaccinationist Boards of Guardians and the Local Government Board. The Guardians of Leicester recently endeavoured to appoint an Anti-vaccinationist Medical Officer.

³ The Infant Life Protection Act 1897, 60 and 61 Vict. c. 57.

attendance of children at school in places other than boroughs in which there is no School Board. Above all, there are the financial functions of the Guardians, which go far beyond the limits of Poor Law finance. Through their Assessment Committee they control and confirm the valuation lists of each parish, and are responsible for the poor-rate assessment, upon which practically all local rates are based.

For the performance of these functions a Board of Guardians is organised after the fashion of other local authorities. It divides itself into committees, whose orders are executed by paid officers. But the great work of granting relief is carried out by the whole Board. After the Assessment Committee the most important committee is the Visiting Committee, which exists in every Union and inspects the workhouse periodically. A District Committee may be formed for any parish more than four miles distant from the place where the Board holds its sittings. Applications for relief may be made to the District Committee, which then reports to the Board.

Committees
and
procedure of
Boards
of Guardians.

Besides dealing with applicants for relief, a Board of Guardians occupies itself with the reports of its committees, which it has full power to confirm or to disapprove. In one important respect the internal organisation of a Board of Guardians differs entirely from that of district, borough, or County Councils. Its rules of procedure are not self-made. The proceedings of Boards of Guardians are in all cases exactly alike, being regulated in the minutest way by the Consolidated General Order of 1847. Everything, in fact, that the Guardians do is done in a prescribed form. This absence of the power of self-regulation is the most characteristic feature of Poor Law government, and is that which most easily distinguishes the authorities which sprang from the brain of Bentham and the energy of his disciple Chadwick from those which developed naturally in accordance with the English traditions of local self-government. That the spirit of Poor Law government is un-English might be inferred from the circumstance that many of its methods have been discarded in the reform and development of other branches of local administration.¹

¹ Highway Boards and Burial Boards (already) abolished, and School Boards, now in process of abolition (1902), are exceptions which prove the rule.

The officers employed in the execution of the Poor Laws are very numerous, though less numerous than the offices of which there were 25,933 in 1898, according to the 28th Report of the Local Government Board.¹ The most conspicuous of the officers is the master of the workhouse, who is armed with large disciplinary powers. Like other Poor Law officials, his remuneration is often meagre, considering that he holds a position of trust and handles a great deal of public money.² Then comes the relieving officer, who attends the meetings of the Guardians and carries out the directions given him in each particular case. It is his business also to make inquiries and to assist the Guardians in arriving at a right decision. The relieving officer is, or should be, the eye and hand of the Guardian. On an average there are about three relieving officers to each Union. Thirdly, medical officers have to be appointed for the workhouses, and district medical officers for attending the poor in their own homes. Fourthly, there are the assistant overseers and rate collectors, who are concerned with the assessment committee.

At the head of the official staff stands the clerk of the Union, with his assistants. He carries on the whole correspondence of the Board, keeps the accounts, and reports to the central authority. He is usually a solicitor by profession, and acts as legal adviser to the Guardians. In relation to the rest of the staff he is in a similar position to the town clerk of a borough. But in one important respect his status and that of the whole Poor Law staff is quite different from the status of a town clerk and other municipal officers. They are indeed appointed and paid by the Guardians; but in all cases, except those of the subordinate officers and servants, the assent of the Local Government Board is required both to the making of the appointment and the fixing of the salary. The appointments, moreover, are for life; and the Guardians cannot dismiss an officer without the consent of the Local Government Board, which, however, may dismiss any officer without consulting the local authority. Pensions, again, can only be granted if the

¹ In many cases more than one Poor Law office is held by the same person.

² In 1898 no less than fifty-eight Poor Law officers were dismissed and sixty-three compelled to resign.

central authority agrees. In a word, the whole local service is ruled and regulated in detail by the Local Government Board; and in this way the objects of the Poor Law reformers have been in a large measure obtained,—that is to say, the conflicting interests and prejudices of the local bodies and local ratepayers have been levelled, and a certain uniformity of administration obtained,—by the orders and regulations of the central authority, which are constantly being enforced by its inspectors.

The subordination of the local officers to a central department has produced a secondary bureaucracy not altogether unlike that of a Prussian municipality. But the system has not been developed into the rigid ^{The rule of the expert.} centralisation desired by Mr. Chadwick, who was for superseding local elective bodies altogether and for putting in their place a service of salaried experts responsible solely to the Poor Law Board. The objection taken by him and his friends to the Act of 1834, was that the effectiveness of the working of the new Poor Law is marred by "local empirics." Students of Poor Law electioneering literature complain that "a definite policy is seldom put forward," and that "occasionally the candidate descends to promises of outdoor relief and plenty of it."¹ In fact Mr. Mackay, from whose lecture on the administration of the new Poor Law these quotations are drawn, goes so far as to assert that but for the action of the Guardians outdoor relief would have been abolished, and the pauper population reduced far below its present numbers. The duties of a Poor Law guardian, we are told by the worshipper of the expert, "like the duties of a physician, have to be acquired by study"—

If it was merely a question of administering a system rigidly prescribed by law, there would be no need of special training for the Poor Law guardian. This of course is not the case. Within the discretion allowed by the law and by the orders of the Local Government Board, there is room for such diversity of action that whole districts can be made or marred, in respect of dispauperisation, by the caprice of a local Board of Guardians.²

¹ "More generally candidates ask to be elected because they are Liberals or Conservatives, or because they have lived in the parish for many years, or because they are in favour of efficiency and economy" (Mackay, *Public Relief of the Poor*, p. 131).

² Mackay, *Public Relief of the Poor*, pp. 131-132.

It would seem that the transformation of the Boards of Guardians into democratic bodies has so far produced no marked changes in the character of Poor Law administration—a fact which makes against Mr. Mackay's view that the Poor Law system, so far from being over-centralised, allows a perilously large discretion to the local authority. At the

The same time official and other evidence goes to ideal Guardian. show that the strengthening of the popular element, and especially the admission of women to Boards of Guardians, has contributed much to the efficacy of Poor Law administration. There are now more than a thousand women guardians; and in most Unions there is a committee of lady guardians, who pay special attention to the care and management of female paupers. The office of Guardian offers no sensational attractions. Its unobtrusive usefulness, its dull and cheerless routine, are avoided by men seeking the local ladder to a political career. Contested elections are comparatively rare. Nevertheless, the quiet and modest philanthropist finds that a seat on the Board enables him to do much good with little fame. In the country a Board is generally composed of farmers, pensioned officers, private gentlemen or ladies. In the towns there is more variety, but the Boards usually consist mainly of middle class people. A guardian with local knowledge, common sense, and experience is of the utmost service to Poor Law administration. In the opinion of Aschrott, the Guardians are generally drawn from the right sources; and it is hard to see any real justification for the introduction of expert government. The expert, it has been said, is a good servant, but a bad master; and his rule would not be compatible with the traditions and tendencies of English democracy. The question, for example, whether in a particular case outdoor relief should be granted,—assuming it to be lawful,—and if so, to what extent, will be answered best by a body which, having insight into human nature, a full sense of responsibility to the ratepayers, and local knowledge, has gone carefully into the facts. In a circular widely distributed among Londoners in 1894 the ideal Guardian was well described as having capacity, knowledge, diligence, and freedom from partisanship. He should be circumspect in supervising large establishments,

such as workhouses, quick to prevent waste and mismanagement, and able to promote economy. It is not enough that he should have sympathy and a warm heart, for Guardians have a public trust to perform; they are not mere dispensers of charity. On the whole, English experience seems to confirm the view that poor-rates are best applied by a locally elected body which would have reasons for tempering humanity with thrift, and thrift with humanity.

It may be that in course of time the management of the poor will be brought into the general scheme of local government, and that the Unions will be made to coincide with other areas of local government. But in this as in other branches of administration the problems

Future policy.

of structure and organisation are less pressing, or at least less popular, than was the case half a century ago. There is far more driving power behind proposals for providing old age pensions, which were exciting keen interest in Parliament and the country until the increasing demands of military establishments and the immense expenditure upon the South African war pushed them temporarily into the background. In spite of two Royal Commissions, a Ministerial programme, and a multitude of suggestions from divers quarters, no legislation upon the subject has yet been attempted; nor indeed has any decisive movement of popular opinion yet been manifested in favour of so great a change. Nevertheless, it seems likely that, when the financial outlook clears a little, Parliament will in the near future make an experiment in the direction of universal pensions for the aged and deserving poor; and one of the incidents of such an experiment would probably be a recasting of Poor Law authorities and a revision of the system of relief.

Our last concern in this chapter is with the financial aspects of Poor Law work—a subject of the utmost importance to the study of English local government. The sums paid annually in poor relief have for centuries been the largest item of local expenditure in England; but they are likely in the course of a few years to be exceeded by the sums spent on education. Nevertheless, the expenditure of Poor Law authorities has risen very considerably in recent years. Between 1889 and 1899 there

Poor Law
expenditure.

was an increase of more than £3,000,000 sterling—a large part of which was, however, due to pauper lunatics. In the year ending March 1899 the total expenditure of Poor Law authorities in England and Wales was £10,828,000,¹ the population then being about 31,000,000. The largest branches of expenditure were as follows :—

Indoor relief (workhouses)	£2,384,000
Outdoor relief	2,732,000
Pauper lunatics (excluding London)	1,691,000
Salaries and pensions of Poor Law officers	1,879,000
Service of debts	838,000

The total debts of Poor Law authorities in 1899 amounted to more than £10,000,000, an increase of 45 per cent in ten years, which is to be ascribed mainly to a general improvement in workhouses and other buildings. A large increase has taken place in the expenditure on outdoor relief, which may be taken to indicate a certain change in policy. The percentage of outdoor relief to the total expenditure varies enormously in different Unions and in different parts of the country. In the Welsh and Midland Unions, for example, the percentages are 79·6 and 73·5 respectively. In the north-western Unions outdoor relief accounts for 43 per cent, and in London for only 20 per cent. These figures show plainly that local discretion tells strongly, and that central control has not produced uniformity of treatment.² In the year 1898-99 about 821,096 persons were in receipt of relief, and were wholly or partially supported out of public funds. Of this number 230,915 were inmates of workhouses. The number of pauper lunatics was 70,000, and the enormous cost of their maintenance (which works out altogether at £2,500,000, including London) is due to the fact that the authorities must necessarily take the advice of experts, whose demands are always large and perhaps at times excessive. It may be observed that the cost of pauperism is not reduced by pros-

¹ In 1900 the expenditure on poor relief rose to £11,567,000. See 30th Annual Report of the Local Government Board, p. cx.

² In country districts outdoor relief can be safely given in many more cases than in large towns, where the pauper population changes from day to day and makes it very difficult to know the actual facts about applications for relief.

perous years, for the standard of pauperism rises with the standard of comfort. The luxuries of one generation of paupers are the necessities of the next.¹

The following table, abbreviated from statistics prepared by the Local Government Board, shows the differences in expenditure on poor relief per head of the population in various Union counties at the end of the nineteenth century:—

Union, Counties, etc.	• Rate per head on estimated Population in the middle of the year 1899.		
	In Maintenance.	Out Relief.	Total Expenditure on Relief of the Poor.
	s. d.	s. d.	s. d.
London (highest) . . .	4 3½	1 0	15 9½
Sussex	1 6	1 11½	7 6½
Devon	0 11½	3 2½	6 11½
North Wales	0 9½	3 11½	6 8½
Leicester	1 0½	2 4	6 0½
Lancaster	1 3½	0 10	4 11½
York (West Riding) . .	0 11	1 2½	4 7
Northumberland (lowest)	0 9	1 1½	4 1½

The rise in the standard of pauper comfort during the last thirty years is indicated by the increase in expenditure per head. In 1871 the estimated average cost per head of paupers of all classes taken collectively was £7:12:0¾; £10:4:10½ in 1881; £11:7:0½ in 1891; and in 1900, £14:10:4¾. In the Metropolis alone the increase was far more startling, the corresponding figures being—For 1871, £10:14:9½; for 1881, £19:5:1¾; for 1891, £22:9:7¾; and for 1900, £28:14:2¼. The difference is partially explained (a) by the inevitable predominance of workhouse relief in London; and (b) by the fact that for historical rather than statistical reasons the fever, smallpox, and diphtheria patients maintained in the hospitals of the Metropolitan Asylum District are included as paupers, although their maintenance is not properly “parochial relief.” But when all deductions have been made, the contrast between the two sets of figures is alarming, and suggests a doubt as to the efficiency of the administration of the Poor Laws in London. Excluding the Metropolis, the average cost

¹ See for the above figures 28th Annual Report of the Local Government Board, and Summary of the Annual Taxation Returns.

of each pauper in England and Wales had risen from £7 : 1 : 2 $\frac{1}{4}$ in 1871 to £11 : 17 : 5 $\frac{3}{4}$ in 1900.

From the expenditure we turn to the revenue side of the Poor Law budget; and here we are at once met by the fact, upon which so much emphasis has been laid, that the poor-rate is not only the basis of all local rates, but that its proceeds are largely applied to purposes not connected with the Poor Law. In other words, the Guardians, assisted by the overseers, do not spend all the money which they raise. The following summary of the Poor Law budget in 1891 and 1895-1900 shows the importance of the revenue derived from the poor-rate and the comparative insignificance of the grants-in-aid:—

Year ended at Lady-Day.	Receipts.			Expenditure.		
	From Poor-Rates.	Sums received by Guardians and Overseers in aid of Poor-Rate.	Total.	Relief of the Poor.	All other Purposes.	Total.
1891	£15,563,794	£2,794,284	£18,358,078	£8,643,318	£9,341,957	£17,985,275
1895	19,063,893	2,483,058	21,546,951	9,866,605	11,626,306	21,492,911
1896	21,236,297	2,563,908	23,800,205	10,215,974	13,212,413	23,428,387
1897	22,166,996	2,594,622	24,761,618	10,432,189	14,041,318	24,473,507
1898	21,410,311*	3,150,385	24,560,696	10,828,276	13,563,140 [†]	24,396,416
1899	22,063,539	3,166,024	25,229,563	11,286,973	14,171,031	25,458,004
1900	23,046,814	3,261,255	26,308,069	11,567,649	14,742,138	26,309,787

The receipts in aid during the years subsequent to 1895-96 include grants to Guardians under the Agricultural Rates Act 1896, amounting to £25,916, £480,316, £506,900, and £506,900 respectively.

According to the report of the Local Government Board, the expenditure on "all other purposes" includes some expenditure by Poor Law authorities for valuation expenses, salaries, and superannuation allowances—altogether £925,043 in the year ending 31st March 1900. Deducting this amount we are left with a sum of £13,817,000, which was devoted in that year to purposes wholly unconnected with the relief of the poor, representing nearly 60 per cent of the total

* The reduction here shown is almost entirely due to the operation of the Agricultural Rates Act 1896, which reduced the payments out of the poor rate under precept to other authorities. † But for this Act the £13,563,140 would have been about £14,868,000, and the subsequent figures would be proportionately larger.

amount raised by poor-rates during the year. It was made up of contributions by the Guardians to County Councils, Town Councils (for various purposes, including contributions to School Boards), to the receiver for the metropolitan police district, Burial Boards, and other authorities under the Burial Acts, School Boards not situate in boroughs, Parish Councils, Parish Meetings, commissioners of baths and wash-houses and of public libraries, and to rural district councils in respect of general expenses, including highway expenses and certain special expenses. The amount also included the expenditure of school attendance committees, expenses connected with the registration of births, deaths, and marriages, and the registration of voters, vaccination fees and expenses, cost of jury lists and other smaller items.¹

What, then, are the functions exercised by the Guardians in relation to this great engine of local taxation? They are functions of control and supervision. But these functions, it should be observed, are not exercised by the Boards of Guardians as such. "The authority in a Poor Law Union which controls and supervises the valuation of rateable properties within it is a committee of the Board of Guardians called the Assessment Committee."² In every Union outside the Metropolis an Assessment Committee is elected annually by every Board of Guardians. It must consist of not less than six, or more than twelve, members. Though its authority extends over every parish in the Union, there is no provision that each parish shall be represented on the Assessment Committee.

The duty of making the valuations for the poor-rate (upon which practically all other rating assessments are based) falls in the first instance upon the overseers, who are appointed under the Act of 1894 by Parish Councils or Parish Meetings. A valuation list has been defined as "a statement of the gross estimated rental and rateable value of all the rateable property in the parish." The overseers are not only the public valuers: they are also entrusted with the

¹ See 30th Annual Report of Local Government Board, p. cx.

² See First Report of Royal Commission on Local Taxation (1899), c. 9141, p. 15. In the following pages this admirable report has been freely used.

duty of making and collecting the rate itself, though a salaried valuer and also paid collectors may, with the consent of the Local Government Board, be appointed by the Guardians to assist the overseers. Re-valuation is very expensive, and consequently a valuation list is usually a mere copy, altered perhaps in some particulars, of the list in force in the previous year. After the parish valuation lists have been made out by the overseers, they are revised by the Assessment Committee, which hears and determines the objections of "aggrieved persons." An appeal may be made from the Committee to Quarter Sessions, or to the High Court by Special Case on a point of law. Otherwise the valuation list stands as made by the overseers and amended or confirmed by the Assessment Committee. When the poor-rate valuation lists have been corrected, approved, and signed by the Assessment Committee, they become "the valuation lists in force," and are the sole legal basis of the poor-rate and of other rates leviable on the poor-rate basis.¹ The levying of the poor-rate itself follows an order of the Guardians, who are required to calculate the amount to be contributed by a parish to the Common Fund by comparing the annual rateable value of the valuation lists in force with the total amount required for Poor Law purposes in the Union. But it is for the overseers to consider the demands made upon them by the various spending authorities, and so to calculate what assessment (how much in the pound) will produce the sum required. Before the rate can be enforced it must be "allowed" by at least two Justices,² public notice must be given, and finally the assistant overseers or collectors must prepare and serve upon the ratepayers demand notes specifying the amount due, the rate in the pound, the rateable value of the premises, etc. A collector then calls for the rate, or receives it at his office or through the post in reply to a written demand. As a rule the poor-rate is collected half-yearly. Generally speaking, only occupiers are liable to pay rates, and occupation, to be rateable, must be "beneficial." The rate is to be made upon "the net annual value" of the hereditaments—"that is to say, of the rent at which the same might reasonably be ex-

¹ Cf. Wright and Hobhouse, p. 102.

² A ministerial act, i.e. not an act of a judicial or discretionary character; cf. *R. v. Gordon* (1818), 1 B. and Ald. 524.

pected to let from year to year, free of all usual tenants' rates and taxes, and tithe commutation rent-charge if any, and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses, if any, necessary to maintain them in a state to command such rent."¹ The Assessment Committee is further guided by a definition of "gross estimated rental" in a later Act as "the rent at which the hereditament might reasonably be expected to let from year to year, free of all usual tenants' rates and taxes, and tithe commutation rent-charge if any."² The effect of these provisions may be roughly illustrated as follows:—If the *landlord* bears the cost of repairs, etc., the rent which the tenant might be expected to pay (the rent of the hypothetical tenant) represents "the gross estimated rental." From this the deductions mentioned must be made in order to arrive at the net annual value, or rateable value, upon which the occupier is assessed and charged. But if the rateable property is held under a lease whereby the *tenant* bears the cost of repairs, etc., then the actual rent paid will represent the net annual value, or the rateable value; and an addition of these items should be made in order to arrive at the "gross estimated rental." It appears, however, from the report already quoted that "this principle is not always exactly observed in practice."³ It has been noticed in the preceding volume that the kinds of property rateable to the poor-rate were not clearly described in the Act of Elizabeth. On one view of it all inhabitants were to contribute according to ability from all forms of property, including stock-in-trade; but upon another view, only land and immovable property were intended. Practice varied in different parts of England until, finally by an Act of 1840, renewed annually ever since, stock-in-trade was exempted. By an Act of 1874 woods, plantations, sporting rights, quarries, and mines other than coal mines (all of which had been exempt), were made rateable to the poor-rate.

So much for the work of the Assessment Committee, in

¹ The Parochial Assessments Act 1836, sec. 1 (6 and 7 Will. IV. c. 96).

² The Union Assessment Committee Act 1862, sec. 15 (25 and 26 Vict. c. 103).

³ C. 9141, p. 17. The Royal Commission makes recommendations for the purpose of securing greater uniformity in valuation.

which, it need only be added, the Local Government Board takes no part directly or indirectly.

In other departments of Poor Law finance the central authority exercises strong control. It can compel or forbid the erection or extension of workhouses, and can in this way increase the burdens of the ratepayer. All the accounts of Boards of Guardians are subjected to the scrutiny of the district auditors, whose powers of allowance and surcharge have already been described in earlier chapters. Nor may the Guardians borrow without the Local Government Board's consent.

It only remains to summarise the "receipts-in-aid" of the poor-rates, which fall into two classes: (1) Grants out of taxes received from county and county borough councils; Grants-in-aid. and (2) miscellaneous receipts from relatives of paupers, sales of work performed in the workhouses, etc. etc. In the year ending 31st March 1900, Poor Law Unions received from the Exchequer contribution accounts of counties and county boroughs the following sums, being aids to rates from taxes:—

Costs of officers of Unions and of district schools (outside London)	£985,357
Maintenance of lunatics in county and borough asylums, registered hospitals, and licensed houses	673,767
Remuneration of teachers in Poor Law schools	30,939
School fees of pauper children sent from workhouses to public elementary schools	479
Maintenance of indoor paupers (London)	353,467
Remuneration of Poor Law medical officers, and cost of drugs and medical appliances (London)	44,929

The other (miscellaneous) receipts in aid of the poor-rates included the following items:—

From relatives or property of paupers	£336,055
From sales of lands and buildings	25,041
From rents	46,754
From dividends, etc.	17,483
From penalties, fines, and fees	5,219
From sales of stone, etc.	150,621
From other sources (including £1100 received directly from H.M. Treasury)	52,811

Altogether it was estimated that the sums received by guardians and overseers in aid of the poor-rates (including

some £428,000 drawn from the agricultural rates grant) amounted in the year ending 31st March 1900 to £3,196,978—less than one-seventh of the total raised by poor-rates during the year. Thus, although central control of poor administration is more complete than over any other branch of local government, far the greater part of the cost of the service is still borne by the ratepayers in each Union.

CHAPTER II

THE LOCAL ORGANISATION OF EDUCATION¹

IN order to understand the system of public education now existing, and the great changes introduced by the Education Act of 1902,—a measure which has aroused one of the most acute political controversies of modern times,—it will be desirable to revert to the development of English education and to supplement in some respects the sketch previously given in one of our historical chapters. In so doing it will be impossible altogether to ignore the central authority, now called the Board of Education, though a later section in this volume is more particularly concerned with its work.

At the beginning of the nineteenth century there were in England and Wales no local authorities and no central authorities concerned with public instruction. Indeed, there was no such thing as public instruction. The children of the poor were only educated in places where endowed schools existed, or where schools were provided by charitable or

¹ See vol. i. pp. 185-187, and vol. ii. pp. 316-319. Cf. Craik, *The State in its Relation to Education*: London, 1896. Holman's *English National Education*: London, 1898. Balfour's *Educational Systems of Great Britain and Ireland*: Oxford, 1898. The principal Acts of Parliament now in force and bearing upon the subject of this chapter are :—

I. The Education Act 1902.

II. The Elementary Education Acts 1870 to 1900, with which should be included the Voluntary Schools Act 1897.

III. The Industrial and Reformatory Schools Acts 1866 to 1899.

IV. (For Wales only.) The Welsh Intermediate Education Act 1899.

A number of provisions in the earlier Acts are repealed and modified by the Education Act of 1902, which is entitled "An Act to make further provision with respect to education in England and Wales."

religious zeal. In 1807 Whitbread induced the House of Commons to pass a Bill modelled on the Scotch system, providing for the foundation of a school in every parish, the cost of which might be defrayed out of the rates. But the scheme was rejected by the House of Lords. In spite of the efforts of Brougham and other reformers no positive step was taken until 1833, when the House of Commons voted the first Education Grant of £20,000.¹ This grant was administered and applied by the Treasury in accordance with the suggestions of two voluntary organisations which, between them, did most of the educational work then carried on in England among the children of the poor. The larger of these two societies was entitled, "The National Society for Promoting the Education of the Poor in the Principles of the Established Church." Its schools are still commonly called, for short, "National Schools," and the great majority of the voluntary or non-provided schools now existing in England and Wales are of this type.

Founded in 1811 to take up the educational part of the work of the Society for promoting Christian knowledge (which was itself founded in 1698), its schools were carried on in accordance with the ideas of Dr. Bell. The pupils were all obliged to receive instruction in the Liturgy and Catechism of the Established Church of England, and were required to attend its prayers and services.²

The smaller but earlier Association, founded in 1808, was called "The British and Foreign School Society," and went on the lines popularised by Joseph Lancaster. Bible lessons were given, but there was no denominational teaching. Children of all creeds were received; but the "Lancaster" schools were supported mainly by the Nonconformists, who generally desire religious teaching, provided that no creeds or catechisms are used. Since the State began to interest itself in education, the religious conflict in regard to elementary schools has been between the champions of the Bible and the champions of the Creeds—between denominational and undenominational religion.

In 1839 a special Committee of the Privy Council, presided over by the Lord President, was established by Order in

¹ Cf. Graham Balfour's *Educational Systems of Great Britain and Ireland*, p. 2. He observes that the grant being a vote in supply did not require the consent of the Lords.

² Graham Balfour, *op. cit.* p. 3.

Council (in order to avoid the opposition of the Peers) for the administration of the annual grant. The Committee appointed a permanent staff, including two inspectors, and from this time forward the work of educating the children of the poor began to acquire the character of a public service. The Government grants increased gradually until they reached a total of £842,000 in 1861. In that year Robert Lowe, then Vice-President of the Committee, formulated the system of payment by results—that is to say, he made the amount of the grant depend upon the efficiency of each school, and the test of efficiency was an examination by one of Her Majesty's inspectors. Lowe described the aim of the new system in an epigram: "If the system will not be cheap, it will be efficient; and if it will not be efficient, it will be cheap." Bad schools lost their subsidies, and in four years the annual grants fell to £636,000.¹

All this time the voluntary principle had been preserved intact. "Attendance grants" had been given in order to encourage local managers to do their best to attract more children to school; but as yet Parliament had made no attempt to introduce a compulsory system. In 1853, indeed, Lord John Russell had brought in a Borough Bill to enable towns of more than 5000 inhabitants to give aid from the rates to local elementary schools; but the Bill, which might well have led to the municipalisation of education, was unfortunately abandoned. Until 1870 all elementary schools remained upon a purely voluntary basis. No child need receive any instruction unless it happened to be a pauper, a criminal, or the child of a soldier, or at work in a factory. All that the State would do was to assist and encourage voluntary effort and local initiative in the building of new schools and the maintenance of old ones. Generally speaking, schools were religious trusts. The managing body was seldom representative, and most of the schools were controlled by the clergy. Teachers were required to submit to a religious test, and children who attended a school were not, as a rule, allowed to absent themselves from the religious instruction until after 1853, when a conscience clause was generally insisted on as a condition of the grants-in-aid.

When Mr. Gladstone's first Ministry determined to pro-

¹ Graham Balfour, *op. cit.* pp. 17-19.

vide for a universal system of elementary education they were met by two main difficulties—the religious difficulty, and the difficulty of finding a suitable organisation. The religious difficulty was abated after acute controversy by two provisions—one applying to the “Voluntary Schools,” which were left practically untouched, and the other to the new Board Schools. “The Time-table Conscience Clause”¹ provided that any religious teaching or observance must be either at the beginning or end of the day’s instruction, and that any child might be withdrawn by its parents or guardian from such teaching or observance. The other clause was introduced by Mr. Cowper Temple as an amendment during the progress of the Bill, and is known as “The Cowper Temple Clause.” It provided that no religious catechism or religious formulary distinctive of any particular denomination was to be taught in any Board School, *i.e.* in any school managed by a School Board.²

The Education
Act of 1870.

At first the Town Council was to have been the local education authority in boroughs; but eventually it was decided, partly for the sake of uniformity, that wherever, in town or country, school accommodation was insufficient, the Education Department might order a School Board to be formed. A School Board under the Act of 1870 consisted of not less than five or more than fifteen members, who might be either male or female, lodger or householder, resident or non-resident. The electors were male and female ratepayers, and the vote was cumulative in order to secure the representation of religious minorities. Lastly, the Act enabled any School Board to make bye-laws to enforce the attendance of all children between the ages of five and thirteen. In 1876, in order to enforce attendance in districts where School Boards did not exist, new bodies called School Attendance Committees (appointed by Boards of Guardians and Borough Councils) were created by the Legislature; and by the Elementary Education Act of 1880 all children from five to ten were compelled to go to school as “full-timers.” Since then the

¹ Elementary Education Act 1870, sec. 7.

² *Id.* sec. 14; cf. sec. 97. By the Kenyon-Slaney clause [sec. 7 (6)] of the Education Act 1902 religious instruction in Voluntary Schools has been placed under the control of the managers.

school age has been raised to eleven, and elementary education, being already compulsory, was made free by the Act of 1891.

From 1870 to 1902 the system established by Mr. Forster's Act remained almost unchallenged and practically unaltered. It introduced four new principles, though it only carried them partially into effect—

1. All children should be educated.
2. Education is a quasi-local service, and should therefore be administered by a local representative authority under the supervision of a central department.
3. All schools managed by a local representative authority shall be supported by the rates as well as by the taxes. And conversely, Voluntary Schools not controlled by the ratepayers shall only receive grants from the taxes. In other words, the central authority with its inspectors represents the taxpayer, while the local authority represents the ratepayer.¹
4. Religious dogmas, which are peculiar to a religious sect, shall not be taught in schools controlled and subsidised by the ratepayers. In "Voluntary Schools," supported partly by voluntary contributions, though subsidised and partially controlled by taxpayers, "denominational religion may be taught," but subject to a conscience clause which allows children to be withdrawn from the school during the hours in which such teaching is given.

Between 1870 and 1902 elementary education in England continued, as we have said, to progress on the lines laid down in the Act of 1870. The proportion of Board School children to Voluntary School children increased steadily; but in 1902 more than half the children in England and Wales were still educated in Voluntary Schools; and in the country districts School Boards were comparatively rare. Both classes of schools "earned" Government grants, and both were inspected by the Board of Education. But whereas Board Schools were managed by a popularly elected authority, Voluntary Schools

¹ The Bill of 1870, when first introduced into the House of Commons, provided that a School Board might give grants out of the rates to Voluntary Schools in its district. But strong objection was taken to this provision, and accordingly the Government grants were increased instead (Graham Balfour, *op. cit.* p. 25).

were under denominational managers; and whereas Board School teachers were appointed without reference to religious considerations, teachers in Voluntary Schools were compelled in most cases to subscribe to the tenets of some particular denomination, and even to assist at religious observances.

The Education (England and Wales) Bill 1902 was introduced by Mr. Balfour and read a first time on the 24th March 1902, and passed its second reading on 8th May by a majority of no less than 237, the Irish Nationalists joining forces with the Conservatives. The Bill, according to its supporters, was designed to introduce a single local education authority for all educational purposes; and indeed the very first words of the first section of the Act seem to provide as much: "For the purposes of this Act the council of every county and of every county borough shall be the local education authority." The Bill was strenuously opposed by the Liberal party and by a considerable section of Liberal

Unionists, who maintained that its real purpose was to perpetuate Voluntary Schools by making these schools a charge upon the rates without giving adequate control to the ratepayers. They also objected to the dissolution of School Boards, especially in large towns. In the course of the long discussions and debates, which lasted through an autumn session into December, the Bill underwent some modifications; and the control of the local education authorities over their statutory education committees and also over the managers of Voluntary Schools was perceptibly increased; but at the same time the financial terms of the "bargain," as it was called, between the Church and the nation were altered much to the advantage of the former.¹ Here, however, we must be content to describe in bare outline the changes which the Bill in its final shape has effected in the organisation of public instruction, and especially of the local authorities. Education is entrusted by the Act of 1902 to the "local education authority," i.e. to the council of a county or county borough, and also (but only for elementary purposes) to the council of a borough with more than 10,000 inhabitants,

The Education
Act of 1902.

The "local
education
authority."

¹ Mainly in consequence of amendments introduced by the Bishops in the House of Lords ultimately, and accepted by the Government.

or of an urban district with more than 20,000 inhabitants. The Act does not at present apply to London. Excluding London there are sixty-one administrative counties and sixty-nine county boroughs. In the sixty-nine county boroughs the Borough Council takes over the powers of the School Board and obtains a certain control over the managers of Voluntary Schools. It also remains the authority for secondary and higher education, and has unlimited power of rating for all purposes. County Councils may be divided into two classes. In the first, comprising eleven administrative counties, there are no boroughs of more than 10,000 inhabitants, or urban district councils of more than 20,000 inhabitants. Consequently, there are no other local authorities for the purposes of elementary education. Subject always to the superintendence of the central Board, each of these eleven County Councils has complete control of all the education within its area, with the great exception of the Voluntary Schools, which remain in some of the most important matters under the control of "foundation managers" appointed under trust-deeds. But it has not quite so much freedom as the council of a county borough, because for education other than elementary it may not lay a rate of more than twopence in the pound without the consent of the Local Government Board.

In the remaining fifty counties there are non-county boroughs and urban districts large enough to be local authorities for elementary education. In these fifty counties, therefore, the County Council is not the sole "local education authority" for the whole of its administrative area, and in some parts has no authority at all, except for purposes of secondary and higher education. Besides County Councils and County Borough Councils there is, as we have seen, under the new Act a third (inferior) class of local education authorities which comprises the councils of all non-county boroughs with upwards of 10,000 inhabitants, and of all urban districts with upwards of 20,000 inhabitants.¹ Of the former there were 138, of the latter 63, in 1902. All have unlimited power to rate for purposes of elementary education ;

¹ A distinction at first sight wholly irrational, and defended merely by an appeal to precedent. It might, however, fairly be said that a small borough is usually more of a town, is more compact, and has more individuality than an urban district of the same size.

and they also have a right to impose a rate of one penny within their areas for purposes of secondary education in addition to the twopenny rate which may be imposed by the County Council.

It will be seen then that after all the quest for a single "local education authority" has failed. The Act shows on the face of it more than one local authority for education in most areas. If we look a little more closely, however, we shall find that the unification effected by the Act is much less even than would at first sight appear. The Act in some respects distributes the powers which it professes to unify.

Besides the 200 non-county boroughs and urban districts already mentioned, the power to raise and spend a penny rate for purposes of higher education is possessed by the Councils of over 100 smaller boroughs and, of over 700 smaller urban districts. Therefore in every non-county borough and urban district of England and Wales outside the Metropolis there will be under the Act two authorities with concurrent powers of raising and spending money for the purposes of higher education, *i.e.* of education other than elementary. In the future, as in the past, the only way to prevent friction and waste will be by the voluntary co-operation of overlapping authorities.¹

But it is in regard to elementary education that the unification or concentration of power, to which so many reformers have looked, is furthest from realisation. The local management and control of elementary education, so far as the old Board Schools are concerned, are handed over to two authorities (the Council and its Education Committee), while the control and management of Voluntary Schools are entrusted to the same two authorities and also to a third—the Board of Managers. Let us very briefly summarise the constitution and powers of these three local organs of administration.

I. The first of these, "the local education authority," has already been touched upon. Every County Council, every Council of a borough with more than 10,000 inhabitants, and every Council of an urban district with more than 20,000 inhabitants, is a "local education authority" for purposes of elementary education. In the Bill, as it was originally introduced, the sole functions of the local education authority were (1) to raise a rate and to borrow money, and (2) to

¹ Cf. Education Act 1902, sec. 20.

select a majority of the Education Committee and to frame a scheme for the constitution of an Education Committee which must be approved by the Board of Education.¹ Eventually, however, section 17, which provides for Education Committees, was so modified that the Council, though it is obliged to consult the Education Committee (save on matters of urgency), is not obliged to act upon its advice, and may if it likes take the whole administration of the Act into its own hands, and appoint an ordinary administrative committee. Instead

The Education
Committee.

of all powers other than financial being delegated by statute to the Education Committee, the Council is now able to delegate what powers it likes (other than financial), except those which are reserved to managers of Voluntary Schools. Nevertheless, it is almost certain that in practice (if the Board of Education accepts the scheme of the local education authority) the Education Committee will in most cases be made a semi-independent body, and will, except when serious friction arises, exercise most of the powers vested by the Act in the "local education authority."

II. By section 17, as amended in the autumn session of 1902, the Education Committee (or committees—for each "local education authority" may have more than one committee) is to be constituted in accordance with a scheme made by the Council and approved by the Board of Education. This is certainly a striking instance of interference by a government department in the self-regulating and self-organising powers of county, borough, and urban councils. Every such scheme must provide (a) "for the appointment by the Council of at least a majority of the Committee," who must also be members of

¹ The financial powers of the "local education authority" for higher education are set out in section 2:—

"The local education authority shall consider the educational needs of their area and take such steps as seem to them desirable, after consultation with the Board of Education, to supply or aid the supply of education other than elementary, and to promote the general co-ordination of all forms of education, and for that purpose shall apply all or so much as they deem necessary of the residue under section 1 of the Local Taxation (Customs and Excise) Act 1890, and shall carry forward for the like purpose any balance thereof which may remain unexpended, and may spend such further sums as they think fit: Provided that the amount raised by the council of a county for the purpose in any year out of rates under this Act shall not exceed the amount which would be produced by a rate of twopence in the pound, or such higher rate as the County Council, with the consent of the Local Government Board, may fix."

the Council unless, in the case of a county, the Council otherwise determine; and (b) "for the appointment by the Council, on the nomination, or recommendation, where it appears desirable, of other bodies (including associations of Voluntary Schools), of persons of experience in education, and of persons acquainted with the needs of the various kinds of schools in the area for which the Council acts." In order that women might not be wholly excluded from the control of national education, it was further provided by amendment that women, as well as men, must be appointed to serve on every Education Committee. Joint Education Committees may be formed by combinations of "local education authorities."

The powers of the "local education authority," or of the Education Committee, if the Council delegates its powers, are of course much greater in regard to Board Schools than in regard to Voluntary Schools. School Boards are abolished, and local education authorities are their heirs. By the Third Schedule, where the terms "school boards" and "school districts" occur in the unrepealed parts of the Elementary Education Acts 1870 to 1900, they are to be construed as references to "local education authorities" and the areas for which they act. The control which may be exercised by "the local education authority" over Voluntary Schools is not so easily ascertainable. By section 5 of the new Act

The local education authority shall throughout their area have the powers and duties of a school board and school attendance committee under the Elementary Education Acts 1870 to 1900, and any other Acts, including local Acts, and shall be responsible for and have the control of all secular instruction in public elementary schools, not provided by them; and school boards and school attendance committees shall be abolished.

But the general effect of this section is pared down by a number of provisions which recognise the existence of "managers" with independent powers, including the appointment and dismissal of teachers.¹ The control of the local education authority, or of the Education Committee, over Voluntary Schools may be summed up under five heads:—

1. The right of giving directions to the managers concerning secular instruction, and of putting them into execution if the managers fail to comply.

¹ The consent of the local education authority is necessary, but may not be withheld "except on educational grounds."

2. The right of inspection.
3. The right to veto the appointment and to dismiss teachers, "on educational grounds," and to appoint pupil teachers when there are more candidates than posts to be filled.
4. The right of appointing a third of the managers.
5. The implied right to refuse rate-aid, which is involved in the duty to keep the schools efficient (sec. 7).

III. We now come to the constitution of the managers, the third body which obtains a share in the distribution of power in regard to elementary education. All public elementary schools have a body of managers. In the case of schools provided by the local education authority (*i.e.* the old Board Schools) the body of managers must not exceed six, not more than four to be appointed by the local education authority, and not more than two by the minor local authority.¹

So far the control of the "local education authority," or of its Education Committee, is complete, because it appoints the local managers or a majority of them. But this is not the case with regard to the Voluntary Schools, which will now for the first time receive aid from the rates in the same way as the schools provided by public authorities.

Sec. 6. (2) All public elementary schools not provided by the local education authority shall, in place of the existing managers, have a body of managers consisting of a number of foundation managers, not exceeding four, appointed as provided by this Act, together with a number of managers, not exceeding two, appointed—

- (a) Where the local education authority are the council of a county, one by that council and one by the minor local authority; and
- (b) Where the local education authority are the council of a borough or urban district, both by that authority.²

¹ The expression "minor local authority" means the council of any borough or urban district, or the parish council, or (where there is no parish council) the parish meeting of any parish, which appears to the County Council to be served by the school. Where the school appears to the County Council to serve the area of more than one minor local authority, the County Council shall make such provision as they think proper for joint appointment by the authorities concerned (sec. 24 (2)).

² It may be observed that the rural district councils have absolutely no share in the administration of the Education Acts, though they may receive delegated powers from a county council under section 20 (a).

This was the clause which produced the most acute controversy; and a brief statement of the two main objections taken to it will give some insight into the religious and political conflict which raged over the Bill of 1902. The first objection was taken by persons who desire that parents should be safeguarded against denominational intolerance. In England and Wales there were in the year 1902, according to Mr. Balfour, no less than 7478 districts with only a single school—where consequently parents had no choice of “religious atmosphere” for their children. These “single school districts” were divided as follows:—

5600 National (Anglican).	37 Wesleyan.
418 Voluntary (undenominational).	35 Roman Catholic.
62 British.	1326 Board.

Accordingly an amendment was moved in the House of Commons (on July 30) by Mr. Dillon on behalf of the Irish Catholics, who usually voted with the Government, to provide that in districts where only *one school* exists the managers of the Voluntary School should be one-third nominated by the trustees, one-third by the minor local authority, and one-third by the parents of the children on the school books. The amendment was lost by 230 to 189.

Some idea of the variety of elementary schools still in being may be got from the following table, showing the various types of schools for the area in which the Lancashire County Council is now the “local education authority”:

Type of School.	Number of Schools.	Accommodation provided.	Average Attendance.
National	207	64,701	38,748
Church of England	150	40,265	26,289
British	46	18,188	10,667
Board	43	16,483	10,894
Roman Catholic	113	27,313	14,248
Wesleyan	53	19,457	11,070
Baptist, Congregational, and other schools	111	26,532	16,490
Totals	723	212,939	128,406

Secondly, the clause infringed a constitutional principle that

local taxation involves local representation—that schools maintained out of the rates should be managed by the ratepayers. An amendment to effect this by reducing the number of voluntary managers from two-thirds to one-third of the whole was closed and beaten by 81 (182 to 101).¹

Two innovations are made by the Act in its financial provisions. Ever since the abolition of Church rates in 1868, the payment of rates for any local purpose has always involved local control. The new Education Act, however, while making Voluntary Schools a charge on the rates, preserves their denominational management and leaves the teachers still subject to religious tests. Rate aid and an additional grant of £1,300,000² from the exchequer are substituted for the contributions of voluntary subscribers for every purpose except the upkeep of the school buildings. The second innovation is one which will probably give general satisfaction. Hitherto, as we have seen, borough accounts have been audited by borough auditors. While the accounts of all other local authorities have been audited by the Local Government Board, municipal expenditure has never run the gauntlet of an independent audit. Under the new Act the educational expenditure of all the "local education authorities" will be audited by the Board.³ Thus for the first time the expenditure of Voluntary Schools and that of boroughs on higher education is brought under the review of independent auditors.

¹ Mr. A. E. Hutton's *Amendment*, Hansard, 6th August 1902.

² In the year ending 31st August 1901 the voluntary contributions to public elementary schools were:—Church of England, £645,000; Wesleyan, £21,000; Roman Catholic, £83,000; British and other, £83,000. In 1901-1902 the total expenditure of the School Boards in England and Wales was nearly £13,000,000. In the same year the grants from the exchequer in aid of education amounted in all to £9,753,000, and the children who benefited numbered 5,750,000. In 1899 the grant was £30,000, and 58,000 children benefited. For the grants-in-aid see later on the Board of Education, p. 317.

³ See section 18 (3).

PART VI

THE STRUCTURE AND WORKING OF THE CENTRAL AUTHORITY IN LOCAL GOVERNMENT

CHAPTER I

THE DEVELOPMENT OF CENTRAL CONTROL¹

A CENTRAL authority presiding over internal administration, either of the kind now established in England, or that which has existed for a much longer period in continental countries, was utterly unknown and undreamed of in the "classical" age of English constitutional history—that is to say, in the reigns of the four Georges. In those days, indeed, the executive

¹ Besides the legal commentaries on local government previously referred to, special reference may here be made to the following authorities :—Maltbie, *English Local Government of To-Day: A Study of the Relations of Central and Local Government*, New York, 1897 ; Gneist, *Englisches Verwaltungsrecht*, vol. ii. pp. 1151-1190 (1867) ; Dicey's *Law of the Constitution*, chap. xii. ; Goodnow's *Comparative Administrative Law*, London and New York, 1897 ; Vauthier's *Le Gouvernement locale en Angleterre*, p. 349 sqq. ; Arminjon, *L'Administration locale en Angleterre*, chap. xiii. ; Sir J. Simon, *English Sanitary Institutions*, 1897, chap. xv.

Among parliamentary and departmental papers the Second Report of the Royal Sanitary Commission (c. 281 : London, 1871) is of particular value. The Annual Reports of the Local Government Board abound in illustrative material. The statutory foundation of the central authority for local government is laid mainly by the Poor Law Amendment Act of 1834, the Local Government Board Act of 1871 (34 and 35 Vict. c. 70), the Act of 1872 (35 and 36 Vict. c. 79), and the Public Health Act of 1875 (38 and 39 Vict. c. 55), Part IX. On the congestion of the business of the Board and proposals for relieving it, see First and Second Reports of the (Departmental) Inquiry Committee, 1898 (c. 8731 and 8999).

powers of the State had already been concentrated in a Committee of the Privy Council—the Cabinet. But it was an authority limited and bounded by the impregnable frontiers of the law as interpreted by an independent judicature. An Act of Parliament must be obeyed until it is amended or repealed by another Act of Parliament. A ministry had not, nor has it now, any co-ordinate power of legislation by ordinance. It could not even supplement Acts of Parliament by issuing of its own motion orders and regulations.

The internal administration of the country was not subordinated to the Cabinet; it was regulated solely by the rules of the common law and innumerable Acts of Parliament, public and private. Subject only to the remote possibility of interference from the High Courts of Justice, that which we call, for want of a better term, internal administration, was carried on by Justices of the Peace in counties and boroughs, the Crown and its advisers having no legal power to influence their action. In other words, after the close of the seventeenth century neither King nor Cabinet could exercise any regular and direct control over local government; for local government was completely localised and decentralised. The management of the poor, of public health, roads, and police was entirely controlled, and, for the most part, directly carried out, by the local magistracy under the legal supervision of the ordinary Courts.¹ That certain branches of the executive were directly controlled by the central authority of Great Britain in the eighteenth century is of course true.

¹ Cf. von Vincke's *Darstellung der inneren Verwaltung Grossbritanniens* (1815), p. 5. This sharp-eyed friend and pupil of Freiherr von Stein hits off "British government of local affairs" as follows:—"It has this peculiarity. It is not carried on by paid officials arranged in various degrees of subordination and authority; it is not controlled by the incessant activity of departmental clerks, who know everything and want to direct everything, and would like to prescribe beforehand every movement of an intermediate authority. On the contrary, it relegates a great mass of business to the inhabitants, and leaves them to the exercise of their own judgment and energy." And again (pp. 93-94): "The Home Secretary only corresponds with the (local) authorities in extraordinary emergencies, such as rioting. His department consists of but two under secretaries and eighteen clerks. This alone, coupled with the personal weight and authority of so many detached authorities and officers, makes it impracticable to keep up regular official communications, to distribute directions, and to receive reports. Consequently the Home Secretary exercises absolutely no regular control over the Justices of the Peace."

The whole province of foreign policy, the government of colonies and plantations, the control of the East India Company, the management of customs and excise, and of the army and navy, all pertained to the Ministry and its departments. But with regard to home affairs, or what we have called internal administration, the Government had no inherent power of issuing ordinances and regulations except in so far as it retained and possessed the old prerogatives of the Crown. Of these prerogatives far the most important was patronage. The appointment of Judges and Justices, the distribution of Crown livings and other preferments, the gift or sale of military and naval patronage, and, in short, almost the whole personal influence of the Crown upon administration, passed in the course of the eighteenth century, despite George III.'s determined and repeated efforts, into the hands of a small group of statesmen, representing the parliamentary majority in the House of Commons, responsible to Parliament, and called the Cabinet. The legislative and administrative powers concentrated in an English ministry at the close of the eighteenth century were therefore enormous; for even the sphere of local government, in one sense wholly detached and independent, was under the control and supervision of Justices appointed by the Ministry from members of their own class, and generally of their own party. But if we except patronage, this power was usually exercised under Parliamentary forms and always under Parliamentary control. To an English government of that time the very conception of administrative ordinances, the regular weapons of a continental government, was utterly unknown.¹ After long centuries of development, the absolute rule of the Norman kings had been replaced at the beginning of the nineteenth century by the omnipotence or omni-competence of Parliament. But the rule of Parliament is accompanied by the rule of law; and the English system of government cannot be understood, nor its stability estimated, unless the position and function of the Courts are at the same time envisaged. We have already

¹ "Verordnungen, welche die allgemeine Nothdurft erheischen möchte werden von ihnen vorbereitet und dem Parlamente in Antrag gebracht" (Vincke, *op. cit.* p. 92). A Royal Order in Council was an apparent rather than a real exception; for, as an active body, the Privy Council was simply the Cabinet, and as such responsible to Parliament.

shown that every new rule of law, either general or local, must be enacted by Parliament; that all regulations affecting the legal rights of a citizen required legislative sanction; and that the carrying out of all laws—in other words, administration—was entrusted finally and in the last resort to Justices and Judges. And from this it is apparent why in the eighteenth century, when the decentralisation of the executive had been carried to its extreme point, there was scarcely any central administrative control over internal administration. In 1815 there was no Local Government Board, and the Home Office, as we have seen, only required eighteen clerks. Nor was such control politically needful, seeing that the class which sat in Parliament was identical with the class which ruled the counties and controlled municipal government. At the same time, another kind of uniformity was assured; for the legality of every act of government, whether done by a minister, a corporate body, or a Justice of the Peace, might be questioned and tested in courts of law presided over by an independent judicature. It is worthy of remark that the British governments of the eighteenth century, which devoted so much energy and strength to foreign and colonial affairs, and waged ceaseless wars for empire, never thought of trying to increase their direct sphere of influence at home by the establishment of a central control over local government. Thus the revolutionary movements of 1795 and of 1815-1820 were combated not by departmental action, but by Parliamentary legislation. The suspension of the Habeas Corpus Act, the passing of the Libel Act, and of the "Six Acts" of 1819, were severely coercive measures; but they contain no evidence of any attempt to give a continental character to administration. In so far as individual liberty was destroyed, it was destroyed by, and in pursuance of, Acts of Parliament.

But the old system of English administration collapsed before the unavoidable demands of an industrial development; and it was this collapse which, in the early decades of the nineteenth century, made it necessary to establish central departments with administrative control over local authorities. The connection of this new departure with the reform movement has already been set forth, as well as the stages by

which the administration of the Poor Law and of public health was placed under the control of two Central Boards, eventually amalgamated in 1871 into one, with the title of the Local Government Board.¹ The sphere of this great department has been enlarged and diversified by successive Acts of Parliament, and now includes most of the field usually assigned to a continental ministry of the interior. At first other departments, and especially the Home Office, played a considerable part; but now the Local Government Board has almost the whole apparatus of control over local authorities in its own charge. Its work may still be classified in two divisions, representing two stages in the growth of administrative control—Poor Law and public health. The control of poor relief and the supervision of sanitary administration are functions similar, yet parallel and distinct; but there is a third financial department, the control of local loans and the revision by audit of local accounts, which extends the operations of the Board over the whole of local administration.² It will be necessary in describing the work of the Board to repeat much that has been stated in previous chapters; but it is important that so many scattered threads should be drawn together in order that this great central department may be surveyed as a whole. A separate chapter will be reserved for the work of another department—that of the Home Secretary—in so far as it is concerned (mainly through its police functions) with local government; and our survey of central administration will conclude with short chapters on the Board of Education, the Board of Trade, the Board of Agriculture, and those other temporary organs of the central government which are known as royal commissions of inquiry.

¹ Vol. i. Part II. chaps. ii.-iv.

² Municipal Corporations and Joint Boards upon which they are represented are the only local authorities whose accounts are exempted from the audit of the Local Government Board.

CHAPTER II

THE ORGANISATION OF THE LOCAL GOVERNMENT BOARD AND ITS SPHERE OF ACTIVITY

THE Local Government Board, one of the largest offices in the home civil service, is, like its immediate predecessor the Poor Law Board, a Parliamentary department, having been developed from a body of commissioners created for a particular purpose until it attained at last to full ministerial dignity. The stages of this process resemble those by which the Treasury, the oldest department of the English government, grew into its present shape. Originally Treasury business

Evolution of
the Local
Government
Board.

was delegated by the Crown to a number of Commissioners appointed for the purpose; and similarly in 1834 the business of supervising the new Poor Law system by the first Poor Law Amendment Act to five Commissioners.¹ But whereas the organisation of the Treasury still rests partly upon customary tradition, and remains after the lapse of centuries formally imperfect, that of the Local Government found itself after a short life of forty years plainly and legibly printed in an Act of Parliament. In essentials, however, the resemblance of the two departments is close. Just as the Chancellor of the Exchequer has acquired by the custom of the constitution sole responsibility for financial policy,² having previously

¹ The Commission was converted into a representative office under the Crown by the Poor Law Board Act of 1847. Cf. Mackay's *History of the Poor Law* for the controversies over this Act during its passage through Parliament. For the history of the Treasury, cf. Gneist, *Englisches Verwaltungsrecht*, vol. ii. p. 762 *sqq.*; and Lord Welby's Letters and Notes contributed to the *Life of Mr. Childers* (London, John Murray, 1901).

² "The position of the Treasury in our constitution is unique. It possesses all the powers and functions formerly wielded by the Lord High Treasurer ;

shared it with the Lords of the Treasury, so from 1847 to 1871 the President of the Poor Law Board, and since 1871 the President of the Local Government Board, have been solely responsible to the Ministry and to Parliament for all that has been done in a steadily widening province of local administration. Nominally, however, the President of the Local Government Board, like the Chancellor of the Exchequer, is assisted by colleagues who sit on the Board over which he presides: the Lord President of the Council, the principal Secretaries of State, the Lord Privy Seal, and the Chancellor of the Exchequer. The Board, however, never meets, and its sole remaining use appears to be that in the absence of the President orders may be signed by one of the *ex-officio* members, usually the Home Secretary, whose office is next door. In such a case, however, the Home Secretary does not consider himself to have any voice in the matter. His signature is a purely formal act. The real link between the department which controls local administration and the other departments of government is the association of Ministers in an informal Cabinet, not in a statutory board. If, as has sometimes been the case, the President of the Local Government Board is not in the Cabinet, he and his department may be expected to play a less important part in politics and legislation. That contingency, however, is hardly to be expected in the future;¹ for the operations of the Board are of such concern to the country, that its representative in Parliament will require not only ability and knowledge, but the weight and dignity attaching to a seat in the Cabinet.

The salary of the President has not grown with the im-

the latter had for centuries been the Chief Minister of the Crown, and his office was therefore invested with traditional as well as statutory powers, which have in great measure passed to the Treasury. The First Lord (usually the Prime Minister) is of course the ultimate head of financial government; but practically he is rather a Court of Appeal between the Treasury and other ministers than the active chief of Treasury administration. The Minister therefore who in practice wields all the power of the Treasury is the Chancellor of the Exchequer, who in official rank is the Second Lord of the Treasury" (Lord Welby, in the *Life of Childers*, vol. i. p. 126).

¹ The last President without a seat in the Cabinet was Mr. Sclater Booth (1874-1880). There is no instance of a President either of the Poor Law or Local Government Board having been a member of the House of Lords.

portance of his office, being only £2000 a year—less than half the amount assigned to most of the principal offices of State.¹

The President
and Parlia-
mentary
Secretary.

The Parliamentary Secretary receives £1200 a year. He helps the President in the work of the office, and is the only other active officer of the Board who sits in Parliament. The Parliamentary work of the President and Parliamentary Secretary consists in answering questions with regard to the Department and in the conduct of Bills through the House of Commons. All public Bills concerned with local government are drafted by the office of the Parliamentary Counsel² in accordance with the instructions of the President; and it is for him to obtain the sanction, first of the Cabinet, and secondly of Parliament, for any important measure belonging to his province. Before preparing such a measure, the Parliamentary Counsel will have a preliminary conference with the President or the Permanent Secretary of the Local Government Board. It may then be necessary to prepare memoranda stating the existing law, tracing the history of previous legislative enactments or proposals, or raising the preliminary questions of principle which have to be settled. Then, we are told, by the authority above referred to,³ the first draft is made either in the form of a rough sketch or of the "heads of a Bill." This original draft is "gradually elaborated after repeated conferences with the Minister, and with those whom he takes into his confidence." It is usual, of course, for Bills dealing with questions of local government to be introduced into and piloted through the House of Commons by the President of the Board; but the Parliamentary Secretary takes charge of minor legislation of a non-contentious character, such as the Annual Bills to confirm the Provisional Orders of the Board. The President is responsible for obtaining the sanction of the Chancellor of the Exchequer to the departmental estimates, and for defending and explaining them, if necessary, to the House of Commons in Committee of Supply. The total budget of the Board amounted in the year 1900 to £197,085.

¹ The salary of the Home Secretary, for example (whose work is similar in kind and certainly not more onerous), is £5000.

² Cf. Sir C. P. Ilbert's *Legislative Methods and Forms*, p. 86 *sqq.*

³ Sir C. P. Ilbert, Parliamentary Counsel to the Treasury, 1899-1902.

The chief of the staff is the Permanent Secretary, at a salary of £1500 to £1800. He is the principal adviser of the President, who naturally trusts to his expert knowledge and long experience. But an efficient and vigorous President exercises through the Permanent Secretary a real control over administration, and will decide in consultation with him all important questions and difficulties as they arise. The five assistant secretaries and the legal adviser (£1000 to £1200 a year) stand next in importance. The assistant secretaries preside over the 5 divisions of the Board; and these again are subdivided into 11 departments, with a principal clerk at the head of each. The Board has a medical officer and a staff of medical inspectors, a staff of engineering inspectors, a parliamentary agent and a legal assistant, 14 general inspectors, and 4 assistant general inspectors, an inspector of audits, 2 inspectors of Poor Law schools, 2 medical inspectors for Poor Law purposes, an architect and assistants, an inspector of local Acts and local loans, an inspector of canal boats, 3 lady inspectors of boarded-out children, and a large staff of auditors. The general inspectors live in different parts of the country, and only pay occasional visits to the Board. One of the assistants to the general inspectors is a lady. In 1898 the staff was considerably increased; and the number of clerks in the office in 1902 was nearly 350, of whom about 57, besides the secretary and assistant secretaries, were in the Upper Division at salaries rising from £150 to £850, and about 134 in the Second Division at salaries rising from £70 to £400. An annual examination is held for the clerkships of the Upper Division in the Home Civil Service in conjunction with the Indian Civil Service, and the competition is very severe, the successful candidates being usually men who have graduated with high honours at the universities. Candidates must be either twenty-two or twenty-three years old. The entrance examination for the clerkships of the Second Division is of a totally different character, and only requires an ordinary commercial education.

The salaries of the district auditors, six of whom live in London, the rest in the provinces, commence at £500 and rise to £800. There are also six or seven assistant

auditors with salaries of £300 to £450. Their duties, which consist in the auditing of the accounts of local authorities, have already been described. The engineering inspectors consist of a chief, deputy-chief, and second deputy-chief, whose functions are advisory, and about sixteen inspectors, whose duty it is to hold local inquiries into application for loans for sewage, water supply, or other engineering works, or to pay visits of inspection. The medical inspectors have very similar duties. The medical officer and his assistant and second assistant remain in the office and advise on medical questions, while the thirteen inspectors travel about the country investigating the state of vaccination, the sanitary condition of various districts, and holding inquiries connected with hospitals.

The organisation of the Board betrays even in its outlines a character distinguishable from that of a continental bureau.

Internal
organisation
and character
of the Board.

It has little resemblance to a foreign Ministry of the Interior. After all its extensions and developments, the Board is most emphatically not the apex of an official pyramid narrowing upwards in regular tiers from a base of provincial and local authorities with delegated power; for there is no such thing as an official hierarchy in England. Even allowing that English counties correspond roughly with the governmental districts and prefectures of the Continent, yet a wide sea separates the two systems of administration. In an English county local government is carried on exclusively by local bodies elected by local ratepayers; in a continental district it is carried on largely by the subordinate officials of a central bureau, with delegated powers under the instructions of official superiors. It is true that English legislation has established a relationship between the central authority and the local organs of administration. But that relationship is not one between a superior, who deals in uncircumscribed imperatives, and inferiors, who yield unconditional administrative obedience. It would be far more true to say that for bureaucratic subjection and centralised omnipotence Parliament has substituted the principle of inspectability. The power of the Local Government Board to inspect the finance and administration of local authorities is the hall-mark of centralisation, as centralisation is understood and practised in England.

Under this general conception comes the whole of the ordinary business of the central authority—to keep itself thoroughly informed of the work of all local authorities, and to compel them to furnish proper statistics, to exercise certain statutory rights of confirmation or refusal, in respect, for example, of local loans or bye-laws, and generally to see that they confine their business and their expenditure to the purposes and limits prescribed by Parliament. The power of regulation by order is also possessed by the Board as an auxiliary to that of inspection; but it is only exercised within limits strictly defined by statute. Broadly speaking, the Board performs its functions as a guardian of public rights and interests without resorting to the imperative mood. That general power of issuing administrative commands and compelling obedience, which belongs to the superior officials of a continental bureau, is quite unknown in England. The Local Government Board has no right even to compel a local authority to carry out the law or to refrain from breaking it, and what power the Board has is usually to be exercised through the medium of the Courts, *e.g.* by issuing a writ of mandamus, or obtaining an injunction in the High Court. It can only venture to use administrative force in exceptional cases defined by statute, and under forms duly authorised by law. Inspection, taken in the widest sense, so as to include inquiry as well as supervision and control, is the ordinary function of the Local Government Board; and it is under the form of inspection that the administrative interference of the central authority in the province of local government usually manifests itself.

The actual execution of the supervisory functions exercised by the Board over pauperism and poor relief is in the hands of the general inspectors, to each of whom a large district¹ is assigned. A general inspector is not a prefect or a dictator set over a province or locality, but a representative of the central authority, who not only watches local authorities and reports their doings, but gives them friendly and trustworthy advice. An inspector's close acquaintance with local needs enables him to go about in the right way upon his main task, which is not to dictate instructions received from above,

¹ *E.g.* the counties of Norfolk and Suffolk, with parts of Essex and Cambridge, form one district of inspection with one general inspector.

but by tactful control and supervision to make sure that the law and the orders in which the law is developed and interpreted are duly and completely carried out. The general inspector will, on the one hand, keep his Board informed of the local conditions, and, on the other hand, will use his own judgment and experience to aid and advise and warn the local authorities. As a member of the central body and an inspector of the local bodies he combines the technical knowledge of an expert with something of the local knowledge of an inhabitant; and his province is so large that he can apply the experience of one district to the requirements of another, and the merits of one authority to the defects of another. No wonder, then, that in most cases the local bodies set so much store upon his opinions, and are so willingly guided by his advice and criticism.

Generally speaking, the function of inspection is closely allied with the function of information. An inspector is a collector and distributor of information, and a channel of communication between the central and local authorities. Only in exceptional cases does he convey peremptory orders from the Local Government Board, and these exceptional cases are almost confined to Poor Law administration. Moreover, when the Local Government Board wants to issue a command, it usually prefers to correspond directly with the local authority rather than employ one of its local officers. The staff thus employed in inspecting and reporting to the Board may be classified as follows:—

1. Poor Law inspectors.
2. Inspectors of buildings and public works.
3. Inspectors of public health.
4. Inspectors of local expenditure and finance.

The work of Poor Law inspection is carried out by the general inspectors, who are also expected to survey and report generally upon local administration in their respective districts. In the second class come the engineering inspectors, who are busily employed in holding inquiries and reporting on sanitary and building schemes in all parts of the country. The medical inspectors have to supervise public health and report on epidemics. The inspection and revision of the accounts of local authorities (municipal boroughs excepted) is

performed by the district auditors. Special inspectors are also appointed for other branches of administration, such as local loans, the manufacture of alkali, and for canal boats.

"Inspectability," then, to use the expression of its great inventor and promoter, Bentham, is the key to an understanding of English central government. It characterises, and in a sense incorporates, those new principles of administration which grew up in England during the nineteenth century. The inspectors are the eyes and ears of the central government, but they are also the organ through which the central government acts directly upon the local authorities. Their personal reputation stands deservedly high. Sometimes, it is true, a jobbing President will lower the standard by filling vacancies with men selected for political or family reasons; but, as a rule, the inspectors and auditors are not only gentlemen, but honest, capable, and well-paid experts. By personal interviews they understand how to smooth away unnecessary causes of friction, and to make an unpopular system palatable to the people. On their shoulders rest the burden and most of the responsibility for the central machinery of local government. It is through inspection that the President of the Local Government Board and his staff get a firm foothold in local administration, and are able sometimes to take the initiative in improvements, as well as to exert their influence upon the general course of administration. It is the inspectors who from time to time provide the information about local government which has to be laid before Parliament and the public. Above all, it is through the inspectors that the Local Government Board makes those local inquiries in different parts of the country which are so often necessary to enable it to exercise properly its discretion in confirming or refusing the applications of local authorities for loans or extensions of territory. At these inquiries the inspector who presides as representative of the Board hears the case for and against the local authority, and may summon witnesses, examine them on oath, and call for the production of books and papers. As representatives of the Board, general inspectors constantly attend the sittings of Boards of Guardians, and take part in their deliberations and discussions, though they have no vote. They are also entitled, if the Board desires,

to attend the meetings of District Councils.¹ In this way the central authority is informed of the course of local government and of the way in which the laws are being carried out by the individual authorities. The utility of State inspection has only been slowly realised in England—first in relation to the Poor Laws, then to factories, then to education and public health. The inspectors of education have been the backbone of the educational system; as constituting the sole instruments by which public control could be exerted over the so-called Voluntary Schools, which, though privately managed, subsist mainly² on public money. It was the inspectorate which to some extent co-ordinated them with the School Board system. Lastly, inspection has partially overcome some of the worst defects of private ownership of railways.

It should be added once more that the principle of "inspectability" has not been equally applied throughout the whole province of the Local Government Board. When that Board took the place of the Poor Law Board the old organisation continued, and was not sensibly modified. It was adopted without being adapted to the new sanitary work. The Poor Law inspectors were merely converted into general inspectors, and they were ordered to report on public health in addition to their previous work. The sanitary work of the Board was placed, like the rest of its work, under the control of the Permanent Secretary,—subject, of course, to the President of the Board,—with the medical inspectors and medical officers as advising functionaries. This arrangement has been sharply criticised by a retired medical officer of the Local Government Board, Sir John Simon, who argues with great force that its deficiencies are principally responsible for the unsatisfactory development of sanitation in many parts of the country—in spite of the formal perfection of public health law in the Act of 1875.³

¹ Public Health Act 1875, sec. 205: "Inspectors of the Local Government Board may attend any meetings of a rural authority or of an urban authority (being a Local Board), when and as directed by the Local Government Board." For the appointment and powers of these inspectors, cf. section 296.

² Now wholly, in consequence of the Education Act 1902. But that Act gives the local education authorities power to inspect schools for themselves.

³ Cf. Sir J. Simon's admirable work on *English Sanitary Institutions*, especially pp. 355-372, 387-392, and 406-407. In the summer of 1902 the Local

Inspection, then, is the principal function and the distinguishing feature of central administration in England. It is an invention characteristically English, yet characteristically modern; for it is designed to obtain the advantages of efficiency without the incubus of bureaucracy, and has arisen from an entirely novel view of the duties and functions which should be assumed by the State in dealing with the industrial and social problems of modern life. But before proceeding to show how the individual powers of the Local Government Board have grown up on the basis of this new constitutional conception of central inspection, thereby setting the central authority to work previously unknown to the English constitution, we must first define and mark out yet more accurately than heretofore the province of the Local Government Board. That province falls, as has been observed, into three large historic divisions, which have been developed side by side, beginning with the Poor Law, followed by sanitary legislation, and ending with a general supervision of local authorities, which may be distinguished from, though it is closely associated with, their sanitary work. The scope of the Poor Law has already been sufficiently described. Briefly, it embraces all the technical details set forth with astonishing definiteness in the Poor Law statutes, and supplemented by legislation dealing with pauper children, vagabonds, the protection of infants, and the provision of reformatories and similar institutions. Here, then, we have the original and peculiar domain of the new methods of centralised administration.

The province
of the Local
Government
Board.

Greater in its extension, though of a less intensive character, is the system under which the sphere, generally and conveniently designated under the title of Public Health, has been regulated by nineteenth century legislation. In our historical review it has already been shown how public hygiene grew directly and unavoidably out of the necessities of a new industrial life, and how from time to time new branches, new authorities, and new departments were added. Unsystematic as such a system must have been, it was doubly

Government Board called the attention of its inspectors to the bad sanitary condition of cottages in the country districts of England, and recommended house-to-house inspection.

complicated by the parallel growth of municipal and communal organisations. Since the Local Government Act of 1871, the control of both these new branches of administration has been merged in the Local Government Board. We need not recount the heads of the legislation which fall under the strict conception of Public Health. The general Acts are sufficiently numerous, and they have been supplemented, as we have seen, by countless local Acts which defy enumeration or classification, though they have given an infinite variety of new powers and functions to local authorities, and a smaller, but not inconsiderable, number to the Board. The constant development of the law and administration of Public Health, and the looseness of the meaning too often attached to the expression, have made it almost coextensive with the sphere of internal administration.

What are the principal statutes which confer powers of sanitary inspection and control upon the Local Government Board? First there is the great Code of 1875, with all its incorporated Acts, such as the various Clauses Acts. Then comes the supplementary legislation which succeeded the Act of 1875. Of these later statutes the most important from the standpoint of central control are the Rivers Pollution Acts, the Canal Boats Acts, the Housing of the Working Classes Acts, the Public Health (Water) Act 1878, the Infectious Diseases (Notification) Act 1889, the Public Health Amendment Act 1890, the Isolation Hospitals Acts 1893 and 1901, and the Infectious Disease (Prevention) Act 1890.¹

By all these laws a multitude of powers and duties were fashioned and entrusted for their execution to town and district councils; but, at the same time, a peculiar form of administrative superiority was given to the central authority, which was thus enabled to control the local councils in various ways, and, moreover, was itself authorised under certain specified conditions to put the sanitary laws into execution. At the same time, the central authority received a limited power to regulate the areas of the local authorities and to extend their spheres of activity. Thus the Local

¹ The Factory and Workshop Acts and Petroleum Acts are mainly under the Home Office, the Animals Diseases Acts and Sale of Food and Drugs Acts under the Board of Agriculture.

Government Board came to exercise functions which had hitherto been confined to Parliament. The control of Public Health conferred by the legislation of 1871-1875 made an important beginning in the direction of a general administrative control over the whole system of local government. In the last quarter of the nineteenth century, however, a far wider conception began to prevail of the duties of Government to the community, and the old idea, which practically confined local authorities to the administration of the Poor Laws and Public Health, no longer sufficed. A conscious attempt was made by the Legislature to further the progress of society and to improve the existing conditions of the masses in town and country. The protection of workmen was enforced for the most part by the factory inspectors of the Home Office, but the rules and regulations are actually carried out more and more by the local authorities themselves. The laws which aim at the improvement of the dwellings of the poor are supervised by the Local Government Board, as well as a whole series of adoptive Acts for the promotion of the public welfare. In the County Councils Act of 1888 and the Parish Councils Act of 1894 were involved not only a great reorganisation of areas and authorities, but also some most important additions to the activity of the Local Government Board.

The highest local authority in the county and the lowest in the parish, which had hitherto had little connection with central government, were now bound to the Local Government Board by many administrative ties; and thus the third of the three important divisions into which the province of the Board has been divided came into existence. In this third province the corresponding function exercised by the Board is that of a far-reaching, though unsymmetrical, supervision over all local authorities in the country. And with this supervision was conjoined a further function subsidiary to an ancient right exercised for centuries by Parliament itself alone. In preceding chapters attention has more than once been drawn to the early history of private Bill legislation, by which Parliament is able to exercise so powerful an influence upon local government. As the administrative needs of counties, towns, and

Provisional
Orders.

parishes increased, local Acts became the normal and regular form of central control in England over local administration. A portentous growth of local needs had already, more than a century ago, made private Bill legislation one of the heaviest of the tasks of Parliament; and at last, when the burden became unbearable, it was found necessary to create a new institution in the shape of Provisional Orders—a device which was put into operation by various departments of the central authority—some old, like the Board of Trade and the Home Office—some, like the Poor Law Board and the Boards of Education and Agriculture, of comparatively recent growth.¹

A Provisional Order may be described as an ordinance made by a department of the Government, which acquires the force of law either automatically after a fixed period, during which it may be contested by petition to Parliament, or by the express confirmation of Parliament itself—that is to say, by inclusion in a Provisional Order Confirmation Act.

In Acts conferring powers of administration upon inferior authorities, especially where those powers are permissive, it has become more and more usual for the Legislature to insert a clause providing that, should a local authority desire to do so and so, it must secure the approval (by order) of the Local Government Board, the Home Office, the Board of Agriculture, or of any other department which happens to have been entrusted with the duty of supervising that particular work. In the laws relating to public health the use of the Provisional Order was extended to a multitude of administrative Acts, which, as they universally required the approval of some superior authority, had hitherto in England been obtainable only by the cumbrous and expensive machinery of a private Act. Henceforth in ordinary cases a cheaper and more convenient way was adopted, which, without depriving Parliament of a long-standing and jealously-guarded supremacy, has nevertheless relieved it of much arduous and non-contentious work—work that can be as well or better performed by experienced officials acting under responsible

¹ Cf. the "Provisional Schemes" of the Charity Commissioners and the "Orders in Council" made by the Privy Council Office; and cf. Clifford, *Private Bill Legislation*, vol. ii. p. 676 *sqq.*

Ministers.¹ The refusal of the Local Government Board to grant a Provisional Order does not in the least prejudice the right of an authority to attempt to secure what it wants by private Bill. The Board may either refuse to grant an application, or may, as is frequently the case, agree to grant it only upon certain modifications being introduced. During the last twenty years this kind of departmental work has steadily grown with the expanding scheme of social legislation and of local activity. Orders for the extension of local boundaries and for regulating the details of local constitutions and elections have provided heavy work for the Board. The natural consequences have followed. The Provisional Order system, in relieving Parliamentary committees, has aggravated the congestion of the department upon which the new work was thrown. In truth, Parliament has been almost too ready to add to the supervisory powers of the central departments, or too slow in equipping them with Congestion and
devolution. staffs adequate to deal promptly with their rapidly expanding business. To this cause, as well as to the dislike entertained by local authorities for the red tape of a London office, must be attributed the reaction against central control which began to work through public opinion upon Parliament towards the end of the nineteenth century.

Under this prompting, as has been seen in previous chapters, certain provisions for decentralisation were introduced into the Local Government Act of 1894. Inadequate as these provisions were—how ridiculous, for example, that the petty concerns of fourteen thousand parishes should be watched from one centre!—still a certain amount of decentralisation was effected, and County Councils were made intermediate courts of administrative appeal, to which inferior authorities might apply.² It must not be supposed, however, that the devolution of the powers of the Local Government Board to County Councils is free from difficulties. The Departmental Committee of 1898, although impressed by the congestion of business at the centre, was, as we have seen,

¹ This legislation is usually drafted in accordance with instructions given by the departments interested, which never lose an opportunity of extending their own powers of supervision, trusting that their staff will be increased to enable them to cope with increased work.

² See previous chapters on County, District, and Parish Councils.

averse to the plan of extending the supervisory functions of County Councils.¹

Thus we see that internal administration has been placed under central supervision to an extent that approaches, and even in some respects exceeds, the sphere of activity assigned to a continental Minister of the Interior. But no blunder could be greater than that—so commonly made by continental writers—of jumping to the conclusion that in England local government has been centralised in the continental fashion, and that in this province of administration the older style of constitutional government in England has been over-ridden by independent departments, or bureaux of officials. Not by the extent of its activity, but by the mode in which it is exercised, should a central department be judged. A central control depends above all on the construction put on the relations between the central and the local authority. Only

Consequences
of haphazard
legislation.

when the peculiar plan, which has been adopted by the English Legislature, for the solution of this great problem has been clearly envisaged, shall we understand English centralisation as it really is, and recognise fully the deep-seated differences which separate it from continental systems of administration. Accordingly, in the chapters which follow we pass on to consider one by one the administrative functions gradually attached to the Local Government Board by legislation almost as haphazard and piecemeal as that by which the local authorities themselves were created and developed—for the empirical character of local government legislation has left its mark upon the structure and organisation of the central as well as of the local authorities. First, the functions of central control were split up among a number of departments; and secondly, the functions themselves remained distinct and uncorrelated. The first evil has been in some degree corrected by a partial concentration of central powers in the newly created Local Government Board. The second evil remains unconquered. The Board, which has obtained the lion's share of local government, enjoys an irregular

¹ On the other hand, the Committee welcomed the evidence of Sir Hugh Owen, then Permanent Secretary to the Board, in favour of transferring the appointment of some six hundred of the smaller Poor Law officers to the Boards of Guardians (*Parl. Paper*, c. 8999, p. iv).

and discontinuous authority—an aggregation of statutory powers, but no general administrative control. It is a Board of controls, but not a Board of control. It enjoys no general abstract delegated authority. Just as its province is a mosaic of distinct pieces dissimilar in shape and size, so its administrative authority may be likened to a bundle of birches differing in size and strength, and in the purposes to which they may be applied. But before sorting the bundle it will be well to divide it into two—the one containing the Poor Law functions, and the other the functions of sanitary control; for the work of the Board naturally falls into these two great departments of administration.

The Poor Law functions of the Board are historically prior, and will be the subject of the succeeding chapter.

CHAPTER III

THE FUNCTIONS EXERCISED BY THE LOCAL GOVERNMENT BOARD AS THE CENTRAL POOR LAW AUTHORITY ¹

THE powers with which the Local Government Board is armed as the supreme authority of Poor Law administration are the oldest concrete example of centralised administration in England. In the present condition of the law they may be grouped most conveniently under five heads:—

Classification of
functions.

(1) The power to inquire freely into the administration of all local Poor Law authorities, and to require the latter to furnish all the information which the department may need.

(2) The power to make general rules and regulations binding upon the local authorities, and also (on application from them) to modify their boundaries. These sub-legislative functions are statutory, and can only be exercised within the limits prescribed by statute.

(3) The subordination of the local bodies and their officers to the Local Government Board for certain definite purposes of administration.

(4) Financial control over local expenditure and local loans.

(5) The power of finally adjudicating disputes between two or more of the local authorities. This power is concurrent with, and not exclusive of, the jurisdiction of the ordinary courts of law, and only exists where it has been conferred and defined by statute.

¹ Cf. Maltbie, *Local Government*, pp. 24-64; Archbold's *Poor Laws and Poor Law Statutes*; Glen's *Poor Law Orders*.

Central control over the local administration of the Poor Law is grounded first and foremost on the unlimited right of inquiry. In conferring this right on the Poor Law Commissioners, the Legislature did not enunciate any new constitutional principle.

The right of inquiry.

There had always been a power to investigate the condition of government in any part of the kingdom, exercisable by Parliament on the one hand, and on the other hand by the Crown, through delegates whose appointment followed upon a resolution of Parliament—in other words, either by a Parliamentary Committee of Inquiry or by a Royal Commission. With the creation of the Poor Law Commissioners this full power of inquiry was for the first time established on a permanent basis, and introduced into a special branch of departmental administration. Like the Royal Commissions of Inquiry, from which the original Poor Law Commissioners were in essentials scarcely distinguishable, the central authority had the right to examine every citizen, and, above all, the members and officers of every local authority, and in the last resort to take evidence on oath.¹

In its staff of inspectors the central authority has a special apparatus for actualising this power of unlimited inquiry. We have already in a preceding chapter sketched the principal features of this institution. Only by the incessant activity of the inspectorate would it have been possible to collect in a methodical fashion accurate information with regard to the real conditions of government, and without actual knowledge of the facts, gathered on the spot, and uncoloured by predispositions, the central authority could not usefully put its administrative powers into execution. As it is, with information from all parts of the country accumulating in the central office, the presiding minister and staff of the Local Government Board are best qualified to report to Parliament from time to time

The Poor Law inspectors.

¹ At first, as we have seen, it was desired to make the Poor Law Commissioners a Court of Record, but this seemed to conflict with the English principle of the supremacy or rule of law. It was determined, therefore, to empower the Commissioners to take evidence on oath without constituting them a Court of Record, and therefore without enabling them to punish witnesses for "contempt of court." The Local Government Board has inherited the power and the disability attached to the old Poor Law Commissioners.

upon the conditions of administration, and to propose such amendments to the law as are shown by experience to be necessary or desirable; and at the same time to guide and direct the local authorities along the path marked out by the law. The advice of a Board informed by the concentrated experience of a skilled inspectorate is of course highly valuable to local authorities entrusted with the administration of the Poor Laws. It might be feared that even the best advice would be disregarded by some at least of the local authorities; for no power lies in the Board to compel obedience. But compulsion was unnecessary, for this reason, that the central authority has from the first been provided with such a power of issuing orders as no Minister for Home Affairs had ever before possessed. This power, applied so thoroughly when the

Poor Law system was reformed, has made the local authorities far more inclined to invoke of their own accord the friendly counsel of the central authority than to provoke its peremptory ordinances. The orders of the central authority are directed to two main purposes: on the one hand, to the material objects of poor relief, and on the other, to its organisation. As to the first, the Local Government Board is empowered for the purpose of carrying out the law to supplement it by orders containing all the necessary details—to fill out, as it were, the outlines of the statute. This is done partly by general orders or rules binding upon all Boards of Guardians—partly by particular orders binding only upon specified Boards. To invest a government department with a power of issuing general orders of an administrative character having the force of law was undoubtedly an innovation upon the traditions of English constitutional life, according to which Parliament alone had been competent to make such rules, and then only in the form of laws. This innovation is justified by purely practical considerations. Only by an authority which could accommodate itself to changing conditions, and descend at any moment into the smallest details, could the administrative and economic principles of the new Poor Laws have been put into successful operation. It had already proved impossible to satisfy the pressing problems of pauperism by the clumsy apparatus of Parliamentary machinery. At the same time the utmost precautions were

taken to secure a constitutional control over this regulating power of the central authority. All General Orders have to be published in a copy of the *London Gazette*, to be laid upon the table of Parliament, and may be revoked by an Order in Council. Thus Parliament retained a formal superintendence over the quasi-legislative functions which it had assigned to the Poor Law Commissioners. Moreover, the position of the President of the Local Government Board as a member of the Government, and usually now of the Cabinet, makes it easy for Parliament to criticise, restrain, and rectify any excessive use of this prerogative.

Neither of these safeguards is often used, but that does not diminish their practical value or their theoretical importance. Under cover of constitutional guarantees, the new form of central organisation has fitted ^{and judicial} itself smoothly enough into the Parliamentary ^{control.} system. Two centuries of unchallenged Parliamentary supremacy and the complete fusion of executive and legislature in Parliamentary government have made a conflict between departmental orders and Parliamentary legislation an impossibility in England. But in order to exclude the slightest possibility of such a contingency, and to provide that none of the administrative rules shall have any legal validity except in so far as they are lawful, there is an express statutory provision that every citizen has the right, on depositing £50 as security, to contest the validity of all such orders by a writ of *certiorari* in the High Court of Justice. Thus the political control exercised by Parliament over the discretionary element in the sub-legislative powers of the Poor Law Board was reinforced by a purely judicial control exercised over the legality of those orders by the High Courts of Justice. According to the existing law of the constitution, there is not a single ministerial or non-judicial act of any public authority over which Parliament cannot exercise an active control, and for which Parliament cannot provide an efficient remedy. Through the whole constitution there run the two grand principles, that ministers are responsible to Parliament, and that every civil servant and state official is responsible to the ordinary judges of the land for performing his duties in accordance with the common and statutory law. So long

as these principles are supreme, no friction can be caused by the new functions granted to government departments. The whole modern work of administration has to be carried on within the limits of the laws and under the supervision of Parliament.

With the help of these general orders, the central authority has been able to keep the whole administration of the Poor Law in steady movement along the lines laid down in the legislation of 1834. By a multitude of rules that defy review, outdoor and indoor relief, schools and hospitals, and asylums for the poor, have been regulated in such precise detail that the Poor Laws themselves sink into comparative insignificance before the Poor Law Orders, so far as the actual work of administration is concerned. Some idea of the purview of these Orders may be gained from the simple statement that the latest revised edition of those now in force, which omits the special Orders, is a duodecimo volume of 1200 pages; while the last edition by Glen contains over 1500 pages octavo.¹ There is some irony in Maltbie's observation that it is almost impossible "to suggest any subject upon which orders or instructions have not been issued. The time of rising and returning of workhouse paupers, the amount of soup given to each person, the preparation of food, the baptism of infants born in the workhouse, and many other minor matters are ruled with great precision." In short, the local Poor Law authorities and their officers are so overdosed with Orders that almost every act seems to be performed under a prescription of the Local Government Board.

The following brief Order may be cited in full, partly to exhibit the form of a General Poor Law Order, partly to illustrate the passion for minutiae displayed by the Board in some of its workhouse regulations, partly to show that when all a central department can do has been done, there is still a discretion which must be left to the local Boards:—

¹ Glen's *Poor Law Orders* (1897).

GENERAL ORDER

ALLOWANCE OF TOBACCO AND SNUFF² TO CERTAIN PAUPERS
IN THE WORKHOUSE

(Dated 3rd November 1892)

To the Guardians of the Poor of the Several Unions and Separate Parishes in England and Wales, and to all others whom it may concern :

WHEREAS by certain general and other Orders the Poor Law Commissioners, the Poor Law Board, and the Local Government Board, have made Rules and Regulations with regard to the government of the Workhouses of the said Several Unions and Separate Parishes ;

AND WHEREAS it is expedient that further provision should be made as hereinafter mentioned :

Now, THEREFORE, We, the Local Government Board, in pursuance of the powers given to Us by the Statutes in that behalf, hereby Order that from and after the date hereof the following Regulations shall be in force in the said Several Unions and Separate Parishes :—

Art. 1. Tobacco or snuff may be allowed to such of the inmates of the Workhouse who are not able-bodied or are employed upon work of a specially disagreeable character, as the Guardians may consider should be supplied with the same, the quantity to be allowed in each case, or in any class of cases, to be such as the Guardians may on Resolution prescribe.

Art. 2. So much of the said Orders as provides that no pauper shall smoke in any room in the Workhouse,¹ except by the special direction of the Medical Officer, shall be rescinded ; but the Guardians may from time to time, by Resolution, determine in what rooms smoking shall be allowed, and no pauper shall smoke in the Workhouse in any other room or at any other time than is so allowed.

Art. 3. In this Order—

The word "Union" includes any Union of Paupers incorporated or united for the relief or maintenance of the Poor under any Act of Parliament ;

The term "Separate Parish" means a Parish or Place which is under a separate Board of Guardians ;

The word "Guardians" includes any Governors, Directors, Managers, Acting Guardians, Vestrymen, or other officers appointed or entitled to act in the distribution or ordering of relief to the Poor from the Poor Rates under any Act of Parliament.

Given under the Seal of Office of the Local Government Board, this Third Day of November, in the year One Thousand Eight Hundred and Ninety-two.

Signed { HENRY H. FOWLER, *President*.
 { HUGH OWEN, *Secretary*.

Date of publication in the *London Gazette*—4th November 1892.

¹ Cf. Art. 121 of General Consolidated Order of 24th July 1847.

Nevertheless, it is doubtless convenient, as the old Poor Law Commissioners put it, "that some competent authority should expound the intention of the Legislature to the public by distributing the provisions of Acts of Parliament into smaller portions, arranged according to the subject-matter, and by accompanying them with such interpretations and references as may tend to elucidate their meaning." Since that time statutes and orders relating to the Poor Laws have multiplied; and one of the most pressing needs of Poor Law administration at the present time is a codification of the statutes followed by a consolidation and abridgment of the orders. The last useful effort made in this direction in the province of the Poor Law resulted in the General Consolidated Order of 24th July 1847, consisting of 233 articles, and still in force, save for the first 27 articles, which were repealed by the General Order relating to elections of 14th February 1877. The Order of 1877 has been superseded by two General Orders regulating Elections of Guardians outside London, and dated 1st January 1898.

The second important group of General Orders may be classified under the head of organisation. As the first group sets forth in detail the administrative duties of Poor Law authorities, so the second group is concerned with the minutiae of organisation—the modification of areas, the election of authorities, the qualifications of officers, and so forth. As has been seen in previous chapters, the powers of the central Poor Law authority in relation to Unions (at first limited owing to a reluctance to disturb the vested interests of rate-paying inhabitants) have grown until, under the Local Government Acts of 1888 and 1894, they are almost unrestricted. Since 1867 it has had the right, on the application of the Guardians interested, to alter by provisional order Poor Law areas formed by local Acts. Since 1879 it has been empowered to unite Unions into the so-called Union counties. These rights, however, have been exercised with great circumspection, and only in cases where the arguments for change were extremely strong—that is to say, where even the local authorities were dissatisfied with the existing boundaries. By the latest legislation an initiative in the work of altering and simplifying areas has been vested in the Local Government Board,

and the necessity for local assent no longer exists in cases where simplification is required.¹ But the Orders by which territorial anomalies have been removed are not General but Special Orders, issued after local inquiry, to change the boundaries, and make the necessary financial adjustments between adjoining Unions.

Many General Orders have also been framed by the Board to regulate the organisation of the authorities and officers administering the Poor Law system. In the General Consolidated Order of 1847, for example, a number of articles will be found regulating the proceedings of the Guardians and the appointment of salaried officials; while a minute code of rules has been provided for the nomination and election of Guardians by the two General Orders, already referred to, of 1898.

But granted that, by means of its staff of inspectors and its quasi-legislative functions, the Local Government Board has been enabled to intervene at almost every point in the organisation and administration of the Poor Laws, the question may still be asked: How is that intervention enforced and effectuated? The answer to that question is conveyed in the Orders themselves.

The Guardians have little to do beyond carrying out the instructions contained in the General and Special Orders of the Board. Theoretically, very little discretion is left to them. But what if they are negligent or recalcitrant? The answer is to be found by examining a second contrivance which is essential to the working of the English system of central control, because it tends to secure discipline and obedience on the part of the Poor Law authorities and officials who are engaged in carrying out the Poor Law statutes. But the difference between English and continental subordination is at least as marked as the difference between the English system of inspection and the inspection which is enforced by the Minister of the Interior and his provincial officials in a great continental country. The difference

Relations of the
Local Govern-
ment Board to
the Guardians
and their
officers.

¹ The process of simplification and the provisions for this purpose in the Acts of 1888 and 1894 have been reviewed in previous chapters. Cf. also Wright and Hobhouse, *Outlines of Local Government*, p. 13.

depends upon the fundamental distinction between government by the localised officials of a central government and government by true local authorities locally elected to carry out statutory purposes. In the English administration of the Poor Laws the Guardians are true local authorities, acting, indeed, under the supervision and in accordance with the instructions of the Local Government Board as the chief Poor Law authority. Under such a scheme it is futile to look for, and much more so to pretend to have discovered, that unrestricted duty of obedience to the superior bureau which is imposed upon the subordinate administrative authorities in France or Prussia. It was impossible from the outset that the local administrators of the English Poor Law, who, previously to 1834, enjoyed complete local autonomy, could have been converted by anything short of a revolution into mere delegates of a central authority. Broadly speaking, the spirit of reform was towards representative democracy. It required that representative bodies should be assembled to carry out the laws, and that those representative bodies should be elected by the votes of local ratepayers. Consequently even the local organs of Poor Law administration, the Boards of Guardians, were made to depend for their composition entirely upon local choice. Apart from fixing the numbers of a local Board, the Poor Law Commissioners had no power whatever to interfere in elections. The obvious difficulty of disciplining such bodies in the fulfilment of their duties was far from being overcome by the right of proceeding by a mandamus in the King's Bench Division to compel the Guardians to do their duty.¹ Apart from the slowness and difficulty of such a proceeding, the Commissioners could not hope, even if they succeeded, to do more than compel the Guardians to carry out their statutory duties. Again, the right of the Commissioners to depute their own officers to carry out the law in cases where the Guardians failed to perform their duties did not solve the

¹ Thus a writ of mandamus was issued in 1899 at the instance of the Local Government Board, commanding the Guardians of the Leicester Union to appoint a vaccination officer (*R. v. Leicester Union* (1899), 2 Q.B. 632). The Board makes use of this weapon more frequently than a perusal of the Law Reports would suggest, as the local authorities usually submit at an early stage in the proceedings. It has been decided that a mandamus will lie to compel a Board of Guardians to admit a Poor Law inspector to their meetings.

difficulty. What was wanted was to secure by administrative means a uniform control over the local authorities, and a definite direction of their activities. The desired end was achieved by a peculiar and ingenious device. Parliament conferred upon the central Board the right to prescribe by order qualifications and conditions of service for all paid officers of the Poor Law, and also to fix their salaries and a system of pensions. The actual appointment, indeed, is made by the local Poor Law authority in each case; and the local authority is the immediate employer of the officers and servants. But if an officer of the Guardians breaks the rules and regulations which it has laid down for the service, the Local Government Board may dismiss him without consulting his immediate employers. By a method so circuitous and indirect has the administration of the Poor Laws in England been made subservient to the policy of the Local Government Board.

Nevertheless, a considerable measure of autonomy remained in regard to that part of the work which has to be carried out by the Guardians themselves, and not by their paid officers. Accordingly, in order to bring this province also effectively within the superintendence of the central authority, Parliament created and perfected by gradual legislation another institution ^{Audit and financial control.} of a peculiar type known as the Audit. That institution, which has already been described in another connection, gives the Local Government Board, through its district auditors, an effective supervision over the whole of the expenditure and accounts of Poor Law authorities, and, indeed, of all local authorities except municipal corporations. Here, again, no constitutional principle was violated. A strict financial control is exercised over local accounts and expenditure; but the local bodies which represent the ratepayers are left entirely free from administrative interference as regards the making and levying of rates. The most enthusiastic advocate of centralisation has never suggested that the Poor Law Commissioners or the Local Government Board should be made a rating authority; and accordingly complaints of aggrieved ratepayers, either of the parish or of the Union, and their appeals from the Assessment Committees, are heard not by the Local

Government Board, but by the ordinary Courts of Justice, beginning with Special and Quarter Sessions. But the extension of the system of grants-in-aid of the rates has led to an extension of the financial control of the Board; for the grants are made from the pockets of the taxpayer; Parliament represents the taxpayer, and the Board, being responsible to Parliament, is the constitutional superintendent of these locally expended grants.

But hitherto, for some unexplained reason, imperial revenues have not, as we have seen, been applied on a large scale to Poor Law purposes; and accordingly the financial control of the Board, by which its powers of inspection and sub-legislation are so substantially reinforced, depends almost entirely upon the annual or biennial examination and audit of the accounts of every Union. In addition to this, the assent of the Board is required before any capital outlay may be incurred by the local Poor Law authorities. In regard to one item of expenditure, the Local Government Board may even take the initiative; for, by the Poor Law Amendment Act of 1834, the Poor Law Commissioners were empowered, with the consent of the Guardians or of a majority of the ratepayers of the Poor Law Union, to direct the overseers or Guardians to erect or enlarge a workhouse or workhouses. This power has been held to be discretionary, and the Court of Queen's Bench refused to interfere with the exercise of that discretion at the instance of a parish which thought itself aggrieved by the Commissioners' order.¹ The central authority also controls the loans of the local Poor Law authorities, and prescribes in each case the period within which the principal shall be paid back.

But important as are these subsidiary functions of financial control, the real engine of superintendence is the central Audit. As a means of securing administrative control, the Audit stands on a par with the two great functions of inspection and sub-legislation. Its development well illustrates the march of centralisation in England, as well as its constitutional limitations; for not only has the Central Board organised an efficient system of revision, but that system has been perfected without encroaching upon the fundamental principle that the laws of administration shall be carried into execution by local authorities.

History of the
law of Audit.

¹ See *R. v. Poor Law Commissioners*, 6 Ad. and El. 54.

Before the Act of 1834 the revision of Poor Law accounts was based upon a section of the famous Elizabethan statute, under which the churchwardens and overseers, within four days after the end of their year, were bound to render an account to two Justices of the sums of money received by them, or rated and not received, and of the stock in their hands, and to pay over the balance to the newly appointed overseers.¹

These primitive provisions were expanded by Georgian legislation. An Act of George II. required that "a just, true, and perfect account in writing" should be fairly entered in a book and signed by the retiring churchwardens and overseers, and should be "verified on oath" before a Justice of the Peace, and then be "open to inspection." Overseers refusing to render accounts or to pay over the balance might be committed to gaol. In the following reign there was taken a still more important step in advance. From that time forward the yearly accounts had to be submitted to or examined by two or more Justices, who "shall, if they think fit, examine every such account . . . and disallow and strike out all such charges and payments as they shall deem to be unfounded, and reduce such as they shall deem to be exorbitant." But these powers of the Justices, it will be seen, were merely permissive, and their revision of Poor Law expenditure was generally no more than a hasty formality of Quarter Sessions.²

The new Poor Law of 1834 laid down the important principle that "all payments, charges, and allowances made by any overseer or guardian, and charged upon the rate for the relief of the poor, contrary to the provisions of this Act, or at variance with any rule, order, or regulation of the said commissioners made under the authority of this Act, shall be, and the same are hereby declared to be, illegal, any law, custom, or usage to the contrary notwithstanding."³ The machinery for carrying out this principle marks a great

¹ 43 Eliz. c. 2, sec. 2.

² Cf. First Report of the Poor Law Commission, pp. 171-172; and cf. also instructions issued by the Poor Law Commission Office, 1st March 1836, "to the churchwardens, overseers, and other officers required to account for the expenditure of poor rates." This interesting and able letter (signed Edwin Chadwick) reviews the illegal practices and abuses of "the late mode of administration." In a few parishes, however, an effective Audit had been secured by local Acts.

³ 4 and 5 Will. IV. c. 76, sec. 89.

advance on anything of the kind previously known in English local administration. By order of the Poor Law Commissioners under the Act of 1834 the Guardians of every Union appointed "a competent person" to be auditor. The appointment had to be reported at once to the Poor Law Commissioners; and the auditor remained in office "until removed by the Commissioners or by the Guardians, with the consent of the Commissioners," in which case another auditor was appointed in the same manner. The audit under the Act was to be at such times and as often as the Commissioners directed, but not less often than every half-year. By order of the Commissioners a quarterly audit was instituted. All collectors, receivers, and distributors of poor rates and other receipts under the Poor Law had to render accounts, with all particulars and vouchers, to the auditor. Besides the instructions already referred to, another letter was issued by Mr. Chadwick containing complete instructions to every auditor as to the mode in which the accounts should be audited.¹ Briefly stated, an auditor's duty was "to ascertain that all sums which ought to be received, and all sums which have been actually received, are duly accounted for," and that everything "stated to have been expended has actually been expended," and "to determine whether the actual expenditure is truly stated, and has been made in conformity to the law." Paragraphs 10 and 11 from this letter of instructions may be cited in order to illustrate further the auditor's work:—

10. When you find that the relief which has been given to a pauper of any class has been given in contravention of the orders and regulations of the Commissioners, you are bound to disallow such relief.
11. In examining the accounts of the master of the Workhouse, you will ascertain that all the goods have been duly ordered; and you will compare the quantities of provisions consumed with the number of paupers actually in the Workhouse at different periods of the quarter, as shown in the admission and discharge book, and you must allow no charge to pass in respect of any pauper who was not regularly admitted.²

¹ Both these letters of instructions may be found in the 7th edition of Archbold's *Poor Law* (1853).

² The instructions now issued to auditors were settled in 1879. These instructions are *confidential*, but are understood to be similar to those issued by Chadwick.

Every auditor had the power of disallowance and surcharge against the person accounting in respect of illegal items of expenditure, and he was ordered to report to the Commissioners if he found any paid officer incompetent or fraudulent. The annual audit by Justices remained, however, and the Justices might allow what had been disallowed by the auditors. Thus the work of the auditors was hampered, and it was some time before the central Poor Law authority was able to obtain the thoroughly efficient system which the Reformers had from the first desired. Nevertheless, a mighty change had been introduced, with results which may be more easily appreciated in the light of a further consideration. Under the old law,—that is to say, before 1834,—the churchwardens and overseers were alone answerable for the whole expenditure on poor relief; but under the Poor Law Amendment Act the obligation to account was extended to every officer, and henceforth every paid officer might, as we have seen, be dismissed by the Central Authority.

Many years passed before the Poor Law audit was completely centralised. In 1844, by the Poor Law Amendment Act of that year, the Justices of the Peace were deprived of their audit powers, and the appointment of auditor was taken from the whole body of Guardians and given to the chairman and vice-chairman. By the same Act the Poor Law Commissioners were empowered by Order to combine parishes and unions into districts for the audit of accounts, and to include in the Order directions for the election of an auditor for the district, as well as his duties, remuneration, etc. In 1847 a half-yearly audit was substituted by order of the Poor Law Board for the quarterly audit.¹ At last, in 1868, the idea of a central audit was completely realised, Parliament providing that future vacancies in auditorships should be filled by the Local Government Board, thus placing a valuable patronage in the hands of the President;

¹ In this General Order for accounts of 17th March 1847 a number of additions and amendments were made to the rules of audit. It was supplemented by Orders of 18th November 1850 and 16th March 1854. But all these were rescinded by the General Order for Accounts of 14th January 1867, with 67 articles and 8 schedules, which is still in force.

for no statutory qualification has yet been made necessary.¹ It is certainly desirable that this omission should be rectified. These important appointments have too often been given as a reward for party services or family connections without much regard to competence.

Finally, by the District Auditors Act of 1879,² the conversion of the auditor into an officer of the Central Board was completed, and the whole country divided into auditors' districts. The salaries of auditors were now for the first time charged on the Treasury, but at the same time provision was made for contributions from the local authorities by means of Local Stamp Duties imposed in accordance with a proportionate scale, and levied by a stamp on the auditor's certificate of their accounts.

In this way a much improved and, on the whole, highly efficient service was established. Instead of 450 ill-paid and often inefficient and dependent auditors who combined this with other work, some 50 auditors at salaries ranging from £500 to £800 a year make this their exclusive business in life, and are perfectly independent of the local authorities whose accounts they examine. The Central Audit is now the strongest and most penetrating weapon in the armoury of the Local Government Board, for it searches every detail of local expenditure outside the sphere of Municipal Councils.

A local authority or local officer, whose expenses are disallowed or surcharged by the auditor, has two remedies open. One is by appeal by *certiorari* to the Court of King's Bench, the other by appeal "on the merits" to the Local Government Board itself. The second alternative, which involves no expense, is the one usually adopted, and out of 2033 disallowances and surcharges made by the district auditors in respect of local Poor Law expenditure in the year ending 31st March 1899, no less than 1106 were adjudicated on by the Board.³ Aggrieved ratepayers have also the valuable though rarely used right to appeal against an allowance as well as against a disallowance.

¹ It is the *practice*, however, to appoint only barristers, chartered accountants, solicitors, and persons who have had training under district auditors, or have been in the office of the Local Government Board.

² 42 and 43 Vict. c. 6.

³ See Twenty-eighth Report of the Local Government Board, p. xcii.

We have now seen how, step by step, there has been established in England an empirical system of central control over Poor Law administration. Without losing sight of the theoretical element contributed by the Reformers to the original Act of 1834, we may yet assert that every stage in this development has been dictated by practical needs and temporary requirements. The same practical considerations, and not in the slightest degree any theoretical distinction (such as the German school of jurists loves to conjure up) between administrative and civil law, have carried the Local Government Board a little way over the line which separates administration from justice. Quasi-judicial
powers of the
Board. Some of the quasi-judicial powers of the Board have already been mentioned, and they may now be resolved into three main departments.

1. Its general power of sub-legislation, taken in conjunction with its right to dismiss officials, gives the Local Government Board a certain disciplinary jurisdiction over the Poor Law service.

2. Secondly, as successor of the Poor Law Board, it is often called upon to decide questions arising out of the Law of Settlement.¹

The guardians of any two unions or parishes, or the guardians of a union and the guardians of a parish, or the guardians of a union or parish and the overseers of any parish, or the overseers of any two parishes, between whom any question affecting the settlement, removal, or chargeability of any poor person shall arise, may, if they think fit so to do, by agreement in writing, executed in respect of any guardians by sealing with their common seal, and in respect of overseers by the signatures of a majority of them, submit such question to the Poor Law Board for their decision; and the said Board may, if they see fit, entertain such question, and by an order under their seal determine the same; and every such order shall be in all Courts and for all purposes final and conclusive, between the parties submitting such question, as to the question therein determined.²

Thus, by submission to the Local Government Board, the local authorities concerned may in these cases oust the jurisdiction of Quarter Sessions and of the High Court, and make

¹ In spite of this great sums are spent by Guardians in litigation on settlement questions. See *Parliamentary Returns*, p. 354 (1897).

² Poor Law Amendment Act 1851, 14 and 15 Vict. c. 105, sec. 12.

the Local Government Board into a judicial tribunal, from which there is no appeal.

3. Lastly, as has already appeared, the Local Government Board has concurrent powers with the King's Bench Division as a tribunal of appeal for parties aggrieved by the disallowances or surcharges by the district auditors. The appeal by *certiorari* to the High Court took the place of the appeal to Quarter Sessions when the auditing powers of Justices were abolished in 1844. But practically the Local Government Board receives all the appeals, and deals with them according to its discretion by orders under seal. The popularity of the Board as a Court of Appeal in these cases is caused not only by the absence of expense, but also by the equitable power given it of "deciding . . . according to the merits of the case."

If they shall find that any disallowance or surcharge shall have been or shall be lawfully made, but that the subject-matter thereof was incurred under such circumstances as make it fair and equitable that the disallowance or surcharge should be remitted, they may . . . direct that the same should be remitted, upon payment of the costs, if any, which may have been incurred by the auditor or other competent authority in the enforcing of such disallowance or surcharge.¹

The mode of appeal in these cases has been prescribed by the Local Government Board in some instructions issued to members of local authorities. The powers of the Board are increased by a provision in a later Act, which prohibits auditors from disallowing, or surcharging as illegal, expenses incurred by local authorities which have received the sanction of the Local Government Board.²

Such are the judicial, or quasi-judicial, powers of the Local Government Board as Poor Law authority. They are not in the least analogous to those exercised by a Court of Administrative Law on the Continent. The judicial functions

¹ Poor Law Audit Act 1848, 11 and 12 Vict. c. 91, sec. 4.

² Local Authorities' Expenses Act 1887 (50 and 51 Vict. c. 72). In the year ending 31st March 1899 the Poor Law authorities made 1130 applications to the Board to sanction expenditure, and were successful in all but 29. See further upon this, Twenty-eighth Annual Report of the Local Government Board, pp. xxxvii, xlv, xcii, and cxxxi. This power of sanctioning expenditure otherwise illegal gives a certain amount of much needed elasticity to Poor Law administration.

which attach to the Board were conferred upon it to save time and money in the interests of the local authorities and the ratepayers. From the standpoint of a jurist these quasi-judicial functions are merely a convenient extension of the principle of arbitration to disputes and differences between public corporations. There has been no theoretical limitation in the jurisdiction of the ordinary courts. Their competence has suffered no shrinkage, and no attempt has been made or even contemplated to slip into the constitution a system of administrative law and administrative procedure. There is but one system of constitutional law in England, and in that system the central Poor Law authority is firmly imbedded. The Local Government Board has the same legal rights, and is subject to the same legal obligations, as the citizens or their local elective organs. It may be compelled by them just as they may be compelled by it to perform a ministerial duty by an action for mandamus in the ordinary Courts. Its administrative functions and its sub-legislative powers are in nowise excluded (until a stated period after the publication of an order has elapsed) from review by the Courts. In short, if the acts or orders of the Board are illegal, they can be quashed. An action will lie in the ordinary Courts against the Board for every wrong it may do to an individual or to a local authority, and the Courts will decide in accordance with the same principles upon which similar action against an individual or a local authority would be decided.

CHAPTER IV

THE POWERS OF THE LOCAL GOVERNMENT BOARD AS THE CENTRAL AUTHORITY FOR PURPOSES OF PUBLIC HEALTH AND LOCAL GOVERNMENT GENERALLY

WE have now to describe the present functions of the Local Government Board in the remaining provinces of its work, and principally as superintendent of public health and as general supervisor of all the local authorities. It has already been explained in the historical chapters of the first volume how the modern conception of public health branched out into a labyrinth of statutory provisions, and how along with these statutory provisions, and, as it were, out of them there grew up a local administrative machinery; while the local organisation itself, with all its diverse functions and distinct forms, has been explained in the second part. Accordingly, it only remains to depict the central superstructure from which, as from a watch-tower, the whole local organisation is surveyed and superintended. It will be well, however, first to remind ourselves that the whole of the new organisation as regards its local as well as its central formation was an extension of the principles of the new Poor Law to an ever-growing province of internal administration. The word "extension" is here used advisedly, because it would be scarcely true to speak of an inward development or evolution of the principles of Poor Law government. The process which has been going on for the last half-century may be summarised in a statement that the ideas carried out in Poor Law organisation have been criticised and tested by experience. Those which have been found of most practical value and most suitable for translation into the province of sanitary and

social administration have gradually made their way into the new sphere, as the prepossessions and prejudices entertained by Parliament and the public mind slowly yielded to the moderate demands of the English exponents of centralisation. Here, then, it is our task to portray the results of this development under our previous classification of the powers of the Local Government Board. First, those of inspection. The principle of inspectability has been applied with scarcely less thoroughness to sanitary than to Poor Law administration; but here the inspectors¹ have a slightly different position, because the superintendence of the local sanitary work has not been mapped out in districts for the purposes of inspection. Superintendence is periodical and as occasion arises. Nevertheless, an inspector of the Local Government Board has the right to attend personally at the sittings of all local authorities entrusted with the carrying out of sanitary legislation, with the one exception of the Councils of municipal boroughs.²

The Board as
inspector of
public health.

Further, under the Public Health Acts the Local Government Board may institute through its inspectors inquiries at any given place or time into local undertakings involving public health; and such an inquiry is nearly always held if the business taken in hand by the local sanitary authority requires the assent and approval of the Board. The powers of the inspectors at sanitary inquiries are precisely parallel to those assigned in similar cases by the Poor Law to a general inspector. That is to say, they may summon the officers of the local authority and other persons before them, and may call for the production of papers and plans and other documents which will facilitate investigation. In case a landowner refuses to permit entrance upon his property, the Board may obtain an order from a summary court of jurisdiction,—that is to say, from the local magistrates,—to enter, and such an order can be enforced in the usual way by penalty.³ The Board, however, has not to rely solely on the activity of the inspectors. There is also laid upon every

¹ "Sanitary inspector" has the technical meaning of "Inspector of nuisances" in the Metropolis.

² *Vide* section 205 of the Public Health Act 1875.

³ Public Health Act 1875, secs. 293-296.

local sanitary authority a duty—of the utmost importance in the scheme of control—of making a yearly report upon its administration of the Public Health Acts in its district, and upon sanitary works undertaken by it during the year. And thirdly, there is the financial supervision exercised by the central Board over the accounts of the local sanitary authority; this again is an important element in the system of sanitary control, to which we shall revert later.

When we come to the sub-legislative powers of the Local Government Board, they are found to be distinctly smaller in relation to the urban and rural sanitary authorities than those which it wields in the province of the Poor Laws. First and foremost, the Local Government Board has no power whatever to issue general orders for the enlargement and interpretation of the code of public health. Modern sanitary legislation in England differs from the Poor Laws in one respect. It has been drafted with such attention to the minutiae of administration that there was really no practical necessity to give the central authority any such general power of supplementary legislation as was required in the case of the more sketchy Poor Laws.

The Board as
a sanitary
legislator.

On the one hand, a strong disinclination was felt to permitting any further bureaucratic intervention on the part of the central Board in such of the business of local government as was concerned more or less exclusively with the peculiar interests of a locality; and this disinclination became stronger and in some particulars irresistible. It will be remembered that Chadwick's well-meant but headstrong attempt to introduce State control over public health failed in consequence of the strong opposition it provoked. Yet even Chadwick, with all his admiration for French ideas of government, never dreamt of introducing into England provincial authorities of the prefect type under the appointment and direction of a central bureau. Nevertheless, the gospel preached by over-zealous evangelists of centralisation in England has led to a reaction during the last decade. Many complaints have been made against the "red tape" of "the Circumlocution Office," as the Local Government Board has been called in jest. These complaints have arisen largely in consequence of the

heavy burdens laid upon the Board by recent legislation. Dilatoriness is usually considered to be the mark of a government office, but the staff of the Local Government Board was undoubtedly over-burdened and over-worked at the time when the complaints of local authorities were loudest—that is to say, in 1896, when the departmental inquiry, previously referred to, was instituted.¹

In regard to sub-legislation generally, it is important to bear in mind that neither in the Public Health Acts nor in the Local Government Acts has Parliament ever given to any central authority that general power of issuing orders and instructions for general local government purposes which was conferred upon the Poor Law Commissioners for Poor Law purposes. Again, Parliament has always adhered strictly to the principle that no power of interference with any local authority is possessed by a central authority, save and in so far as it has been expressly granted by statute. Accordingly, every function of this kind possessed by the Board may be found in provisions of private or public Acts, which enable it to exercise specific powers over a single local authority, a particular class of local authorities, or local authorities generally, either by means of general rules or special regulations.

For the purpose of generalising from the particular provisions of so many different statutes, it is necessary to draw a distinction, and to classify the sub-legislative powers of the central authority according as they are concerned on the one hand with the formal laws,—that is to say, with the laws by which the constitution and areas of sanitary and other local authorities are defined,—and on the other with the material laws, which it is the duty of those bodies to administer. In these two departments of sub-legislation the form of the ordinance differs. Moreover, the sub-legislative powers which relate to sanitary areas and organisation are far more important than those which are concerned with public health itself. Let us take these powers in the order named.

1. Even when the Local Government Board was first instituted, Parliament recognised the necessity of giving it power to alter the territorial divisions of local government under

¹ See p. 256 note. As a result of this inquiry, the staff of the Local Government Board was largely increased.

certain definite conditions and restrictions; but neither in 1871 nor four years later, when the Public Health laws were codified, did the Government venture to propose to grant the new Local Government Board the same power of altering urban and rural sanitary areas as that which it possessed in its capacity of Poor Law authority with regard to unions. Even so, its powers of altering administrative areas are considerable. They are exercised under the form not of General Orders, which come into force immediately, but of Provisional Orders, which only come into force after many conditions have been fulfilled. Every such Order must be duly published in the places concerned, and must be preceded by a local inquiry, to which all interested parties are invited. After an Order is made, its operation is suspended until it has been incorporated in one of the Provisional Order Confirmation Bills, which are introduced every year, and until that Bill has been confirmed by Parliament. When the Confirmation Bill has become an Act, each Provisional Order contained in it has the same statutory force as a private Act of Parliament. Indeed, the Order may go through almost the same process as a private Bill. If controversial, it is laid before a Select Committee of Parliament, which has the right of amending it or even of rejecting it altogether. The procedure by Provisional Order is, as before, observed, a substitute for private Bill legislation; but, apart from the alteration of areas, it may only be employed for certain definite purposes, such as the purchase of gasworks, the building of a light railway, the compulsory purchase of land, etc. One of the main objects of this institution is to facilitate and cheapen the granting of those special powers which have given so much elasticity to the work of local authorities in England. The central authority, which in this case may or may not be the Local Government Board, is of course only able to grant Provisional Orders for those specific purposes to which this procedure has been expressly made applicable by Parliament. For other powers a local authority must proceed by private Bill legislation.¹

¹ On Provisional Orders and their development, cf. Clifford's thorough exposition in his *History of Private Bill Legislation*, vol. ii. pp. 676-716, which, however, only takes us to the year 1886. Clifford points out that the authority

One of the most important of these purposes is the alteration of the territorial subdivisions of local government. Thus, when an urban district, or part of an urban district, is to be incorporated in a borough, or—to take a case of more frequent occurrence—when a rural district, or part of it, is to be annexed to a borough or urban district, or again when a special district is to be formed to place a number of districts under a joint Board—in all these cases the local bodies desirous of the change may proceed by Provisional Order instead of by private Bill. In certain cases, moreover,

to grant Provisional Orders was first conferred upon the Enclosure Commissioners, a special central authority created in 1845. Special powers were assigned to the Board of Trade by the Electric Lighting Act of 1882, which made the approval of the Board by Provisional Order necessary for the erection of electric works by municipal or private bodies. Under 25 and 26 Vict. c. 19 the Board of Trade is also authorised to grant Provisional Orders for the erection of docks, quays, etc. The same authority may in the same way constitute Fishery Districts under the Fisheries Acts, Tramways under the Tramway Act of 1870, Water-works, etc.

In 1867 the Poor Law Board received powers to alter unions by Provisional Orders; this power was inherited by the Local Government Board in 1871, and since that time the Board's power of making Provisional Orders has been extended to many other purposes, more particularly by the Public Health Acts; cf., for example, Public Health Act 1875, secs. 176, 208, 211, 270-275, 279-281, 287-290, 303, etc. The following figures, illustrating the wide use of these powers, are drawn from Clifford; between 1848 and 1882 the Local Government Board and its predecessors issued 1205 Provisional Orders, including 503 under the Public Health Act of 1875. Of these 1114 were confirmed by Parliament without any opposition—an important fact illustrating the utility of this new mode of procedure. Eighty-four were controversial, and as such were submitted to Select Committees. Of these 84, 13 were thrown out altogether, and the rest were confirmed by Parliament with or without amendment. It may be added that in 1901, the last year for which the figures are available, 60 orders were issued by the Board, of which 51 were confirmed without opposition. Of the remainder one became unnecessary and was withdrawn, the other 8 were petitioned against but confirmed, in some cases with slight alterations. No doubt one reason why the Provisional Orders are so easily passed is the high estimation in which the opinion of the Local Government Board is held by the Select Committees. When a Provisional Order Confirmation Bill is contested, the Board states its case in what is supposed to be an impartial report, but is really, and in most cases inevitably, a brief in favour of the Order which it has itself approved. The opinion of the Board, like the Provisional Order itself, is indeed usually drafted in accordance with the report previously made by the inspector after a local inquiry. Accordingly, in spite of the impartial and judicial attitude of the Committees, private Bill legislation, at any rate in cases where the Bill is a Provisional Order, usually follows the lead given by the Local Government Board, and favours promoters. On the other hand, a vigorous opposition can usually obtain concessions (cf. Clifford, vol. ii. pp. 690 *sqq.*, 710 *sqq.*)

under the Public Health Act, the Local Government Board may, though it hardly ever does, itself take the initial step; for example, when it is desired to unite existing sanitary districts, or to incorporate an urban district in a borough, or to cut off a part of an urban district and attach it to a rural district. Since 1888, however, some of these powers have been transferred to County Councils, so that in this respect the central authority has been partially superseded, though the Orders made by County Councils are subject to its confirmation. But the alteration of county boundaries is still a function of the Board, though it cannot be exercised save at the instance of the counties concerned. The Act of 1875 also gave the central authority far-reaching powers over the territorial organisation of local government, but without laying down any guiding principle for the exercise of its activity. Consequently, the action of the Board in the years that followed did little to reduce the chaos of countless conflicting areas, which were too intimately fortified by local interests to be simplified and reduced to order by a merely departmental policy. Little therefore was done to improve boundaries, except where the local authorities, interested themselves, called in the Board.

It is practically impossible for an English department of government to pursue a methodical policy unless it is guided and directed by Parliament and public opinion. It was, therefore, not until Parliament and the press began to demand, on national grounds, the simplification of local areas that any general results could be achieved. The appointment of the Boundary Commission in 1887 led to a real inquiry being made into these anomalies and the administrative evils to which they gave rise; and the report of the Commission may be regarded as the first-fruits of a growth in public opinion. The creation in the following year of intermediate courts consisting of local representatives certainly facilitated a reform of local boundaries; for the action of a County Council was not liable to the objection invariably raised against the bureaucratic intervention of a government department. What was begun by the Local Government Act of 1888 was carried further by that of 1894. In the first, County Councils were instituted, and in both a number of principles were laid down

The alteration
of boundaries
by County
Councils.

for a simplification (to be carried out mainly by County Councils) of local areas and jurisdictions. That legislation has been described in earlier chapters; but it is important to emphasise here the temper and spirit which forbade Parliament to entrust the work of carrying out statutory principles to a central authority. Even had Parliament desired it, the business of simplification could hardly have been entirely centralised. It was essential that the people themselves should feel it to be their own work undertaken by their own representatives in their own interests; in a word, that the motive and driving force should proceed from elected local bodies. At the same time, inasmuch and in so far as the interests of the State as a whole were concerned, it was generally agreed to be not only unobjectionable but positively necessary that a central department, acting under the ægis of Parliament, should take a direct part in the organisation of the larger local areas. Accordingly, the formation and modification of the boundaries of county and county boroughs were placed under the immediate superintendence of the Local Government Board, while the formation of the areas of the less important local authorities was transferred to the province of the new County Councils under the mediate or indirect control of the Local Government Board. This was an important modification of the Public Health Act of 1875, and tended to diminish the power of the central authority. The boundaries of counties and county boroughs may only be altered at their own request by the Board, which thereupon directs a local inquiry, and settles the matter by a Provisional Order. Even in this its restricted sphere of direct action the Board, it will be observed, has no initiative of its own. Moreover, in this case also the Order issued being a Provisional Order is completely under the control of Parliament.

According to the wording of the statute, the powers of the Board are certainly not confined to small alterations of area and regulations of boundaries; but practice very soon showed that Parliament had no intention of giving to an administrative authority power to make far-reaching and systematic changes of area. The fact that such changes always perceptibly affect the interests of parochial and district ratepayers has led Parliamentary Select Committees more than

once to recommend that more attention should be paid to local ratepayers than to the purely administrative interests of the central authority—that is to say, financial equity is more important than logical simplicity. The means which counties and (county) boroughs employ to resist the levelling tendencies of the central authority are two: first, petitions against the Provisional Order, followed, if necessary, by actual opposition in the Parliamentary Committee; and secondly, in the case of boroughs and urban districts, the positive method of approaching Parliament directly by Private Bill. In either case the Local Government Board is distinctly subordinated to Parliament. In the case of the lesser authorities, it falls to the County Councils to make orders, to be confirmed by the Board, for the alteration of district and parish boundaries. How this is effected has already been set forth.¹

In the period of transition which necessarily elapsed before the very serious anomalies could be removed, an exceptional state of things arose; for, under the Act of 1888, very large powers of organisation were given to the Local Government Board and the Commissioners appointed under the Act down to the 1st of November 1890.² Until then the Local Government Board and the Commissioners were authorised to make any adjustments which seemed necessary on their own initiative; and it was not until after that date that the displacement of the Board took place, and that the statutory provisions previously described came into full operation.

The result, then, of this new legislation has been to contract rather than to expand the power of the Board to regulate the organisation of local areas. By displacing the Board the Legislature has devised a better means of accommodating local divisions to local interests. If the powers of the Board over this province of its work be compared with those which it exerts as the supreme Poor Law authority, no doubt can remain that, so far as its sub-legislative functions are in question, the Acts of 1888 and 1894, instead of registering a growth of centralisation, mark a distinct advance in a new kind of decentralisation.

¹ See pp. 73-75, and the provisions of the Acts of 1888 and 1894 therein referred to.

² See sec. 61 *sqq.* of the Local Government Act 1888.

Over and above this power of regulating the territorial organisation of local government, the Board has a further important right of issuing general rules of a formal or constitutional character. To provide for every detail in the constitutions of the new local authorities by a statutory provision seemed neither practical nor desirable; and, accordingly, the arrangement of the new procedure at the elections of district and parish councils was entrusted by the Act of 1894 to the 'Local Government Board. In compliance with the provisions of that Act, the Board issued seven lengthy Orders, prescribing with the utmost exactitude every step in the procedure. In this way a certain elasticity is secured, because it is so very much easier to withdraw or modify an Order than an Act of Parliament. But these "formal" or "constitutional" Orders are to be distinguished from the Provisional Orders regulating boundaries which have been under discussion. The Orders regulating procedure at elections are not provisional; nor are they identical with the general orders of Poor Law administration. They are purely technical developments and extensions of statutory provisions, and as such have been held not to require the approval of Parliament. It was considered that they could not possibly involve any element of serious controversy, and therefore the Orders were allowed to come into operation immediately after publication. The very narrowness of the limits imposed upon the exercise of this power forbids any attempt to fabricate a continental analogy; for the substance of the law of which these purely "formal" Orders treat and all its important details have already been prescribed in the statutes themselves; and all that the Board has had to do is to lay down practical rules for the different stages of electoral proceedings. From a constitutional point of view, the real importance of these Orders and their utility consist in the relief afforded to the Legislature. Parliament has thus been freed from the tiresome task of elaborating a multitude of petty provisions, and of setting up by law an apparatus requiring from time to time small alterations, which themselves could only have been effected by new Acts of Parliament. Nor must it be forgotten that in the case of parliamentary and municipal elections the Legislature had already exercised

the casuistical skill of its draftsmen upon this very apparatus of electoral procedure; and really all that the Board had to do was to perform the mechanical task of adapting the older (statutory) machinery, with minor changes of detail, to the requirements of the newly constituted local authorities.

2. In the province of the material as distinguished from the formal and constitutional law of public health, the Local Government Board has other and more direct powers of sub-legislation, though they are small compared with those which have been described in the preceding chapter upon Poor Law control. The most important of these powers¹ relates to the exceptional case of an epidemic, which may constitute a formidable danger to the whole nation, and therefore demands national as well as local precautions. Section 134 of the Public Health Act of 1875 provides as follows:—

Whenever any part of England appears to be threatened with, or is affected by, any formidable epidemic, endemic, or infectious disease, the Local Government Board may make, and from time to time alter and revoke, regulations for all or any of the purposes (namely):—

- (1) For the speedy interment of the dead; and
- (2) For house-to-house visitation; and
- (3) For the provision of medical aid and accommodation, for the promotion of cleaning, ventilation, and disinfection, and for guarding against the spread of disease;

And may by order declare all or any of the regulations so made to be in force within the whole or any part or parts of the district of any local authority.

Orders made under the above section are of practical urgency, and come into force without delay upon publication in the *London Gazette*. In other cases, Orders which bring the influence of the Board to bear directly on sanitary work must not only comply, like the above, with the precise words of the statute upon which they are founded, but must receive the approval of Parliament. The very form of the Order brings into sharp relief its strictly subordinate character, and the inferiority of a regulating Board to a legislating Parliament; for, as a rule, the Orders of the central authority have to be laid before Parliament for its express or silent

¹ We except certain classes of Provisional Orders referred to on the preceding page.

approval, or, at the very least, they require publication by an Order in Council, which makes the whole ministry politically responsible to Parliament and the country for that particular act of administration. An enumeration of a few examples will make this clear. Under the Canal Boats Acts (1877 and 1884) the Local Government Board is empowered to issue an Order which must be laid before Parliament. The Order comes into force in forty days, unless in the meantime Parliament intervenes and resolves otherwise. The Act itself imposes the general conditions under which canal boats may be used as dwellings, makes it obligatory upon the owner of any such boat to register it in the offices of the proper local sanitary authority, and makes special provisions with regard to the education of children living on such boats.¹ The Local Government Board makes regulations with regard to registration (which must be laid before Parliament), and is also authorised to provide by Order for the carrying out of these Acts, and to prescribe all the sanitary precautions which ought to be observed. In the Order of 20th March 1878 certain conditions are prescribed by the Board—a minimum of air-space in the living rooms, a minimum of age for the persons employed on the boats; and a duty is imposed upon the sanitary authorities to make a personal inspection of the boats and generally to enforce the Acts. Here, again, the sub-legislative power of the Local Government Board simply frees Parliament from the task of adding to the law itself the necessary technical addenda. There is nowhere given to the Board any power of laying down independent rules of law or principles of government. And every year it must report to Parliament on the enforcement of the Acts. Of exactly the same kind is the Order of the Local Government Board of 22nd December 1889, for the purpose of putting into operation the Margarine Act of 1887, an Order issued in the year 1887 laying upon local authorities the duty of publishing yearly financial reports, an Order of 14th September 1889 for regulating the procedure of boundary committees of County Councils, and an Order for carrying out the Housing of the Working Classes Act 1890.

¹ Regulations are made by the Board of Education as to certificates of school attendance for these children, and the Board reports annually to Parliament on the Education of Canal Boat Children.

Besides Orders, the Board issues yearly many different memoranda and circular letters, now to explain the meaning of new Acts and the duties they entail on local authorities, and now to offer advice and instruction on particular points of administration. But in all these cases the Board merely prescribes forms and practical rules for the guidance of the administrator, or for the making of statistical returns, or fills in details omitted consciously or unconsciously in the Act itself, but never lays down a principle or decides a point of law—in short, never encroaches on the province of Parliament or of the Judicature.¹ In this way many model forms required by local authorities in the business of administration are issued by the Local Government Board; and the information and official returns which have to be furnished to the central authority are also regulated by general forms. Finally, forms are prescribed for the appointment, with the necessary qualifications, and for the dismissal of those local officials whose salaries are paid in part by the Treasury. In many respects the Acts of 1888 and 1894 have considerably widened the scope of the Board's activity. The complicated administrative machinery then called into existence required comprehensive supervision on the part of the Board if the aims of the Legislature were to be rapidly and safely realised. For this reason Parliament made a slight deviation from its traditional policy, by subjoining to both Acts a general provision, empowering, first the Local Government Board, and secondly, the County Council, to make by Order any additions to the formal law which might appear necessary in the course of administration.² But this provision, as we have seen, was only temporary, and was only intended to tide over a period of transition. However, under it the Local Government Board issued a number of Orders, still in force, fixing costs of elections, regulating proceedings in the case of compulsory purchase or lease of lands under the Allotments Acts, etc.

Our general survey of the sub-legislative powers of the Local Government Board is now complete; and the general

¹ Glen, *Law of Public Health*, vol. ii. pp. 1750, 1805.

² See Local Government Act 1888, sec. 108 (3). This power was continued by the Expiring Laws Continuance Acts 1889 and 1890, and expired on 31st December 1891. Cf. Local Government Act 1894, sec. 83.

impression left by the picture is that the legal and constitutional character of the administrative ordinances known to English law has been conserved in all this recent legislation, which has clothed the central authority for internal government with so many new powers. The Local Government Board is an assistant not a rival of Parliament, and its sub-legislative powers are strictly subservient to the ends of legislation, and are employed solely for the purpose of ensuring that the statutes shall be accurately interpreted by local administrators. That the legislative functions are subsidiary to those of Parliament is not surprising when it is remembered that the Board is itself only a department of Parliamentary government. Almost all legislation of a general character affecting local government is based upon Bills drafted under instructions from the office of the Board. Accordingly, when details are left by an Act to be settled by administrative order, the object in view is to save the time, without impairing the control, of Parliament. For in any case Parliament would not interfere with technical details involving no questions of principle. And an order has the further advantage over a schedule to an Act, that it can be amended or withdrawn without moving King, Lords, and Commons.

General characteristics of quasi-legislation.

That the bestowal of these quasi-legislative functions does not imply, or involve, the slightest intention of conferring upon the Government an independent power to make ordinances is further shown by the circumstance that, at the same time and by the same Acts, a parallel power of sub-legislation was conferred upon the newly-created County Councils, which power did not differ qualitatively from that of the central authority, but only in the extent of its operation. But this statement must be further elucidated. Some account of the sub-legislative powers of town, county, and district councils has appeared in earlier chapters. Here it will be useful to make a short survey of these local rules and regulations and bye-laws in their bearing upon central administration. And, first of all, local, like central, sub-legislation is of two kinds. Just as the Local Government Board is authorised by express statutory provisions to control certain classes of administrative

The sub-legislative powers of local authorities—
1. Regulations

work by general regulations, so the local bodies themselves are by the law of their constitution and by other statutes empowered to regulate their own procedure and the work of their executive staff as well as various branches of administration. Thus, to particularise—besides framing rules for its own proceedings and those of its committees, and besides prescribing the duties of its staff, a Borough Council may make regulations¹ as to connecting private drains with public sewers, as to the width of new streets, the height of new buildings, the regulation of traffic in the streets, and the use of parks, baths, and other public institutions controlled by the Council. In these and a great number of other subjects the statutes themselves confer upon local authorities the power of making quasi-legislative regulations.

There is no broad constitutional rule giving the central authority a general power of examining and approving these

2. Bye-laws
and model
bye-laws.

rules. If they are unlawful, they will not be enforced by a Court of Justice. Local authorities possess a second form of sub-legislative activity which consists in the passing of bye-laws, and may be said to correspond with the Beard's power to make Orders. By means of these, local authorities are empowered to make rules binding upon all persons within their district. Already by common law, as we have seen, and before the passing of the Municipal Corporations Act, such bye-laws were invalid if they ran counter to the laws of the land. To this incapacity the Public Health Acts have added another restriction by subjecting the making of bye-laws by all local sanitary authorities to the superintendence of the Local Government Board. All bye-laws of local sanitary authorities (including Borough Councils acting in that capacity), and all bye-laws made by County Councils, except bye-laws for the good rule and government of the county,² must be laid before the Board, and do not come into force until its approval has been given. To approve or disapprove is wholly within the discretion of the Board. To further

¹ The rules as to the publication and confirmation of bye-laws do not apply to regulations (Public Health Act, sec. 188). It is difficult to invent any logical principle to explain why in some cases Parliament has chosen regulations instead of bye-laws as the means by which a local authority shall legislate for its district.

² Cf. *Strickland v. Hayes*, 74 L.T. (n.s.) 187; 60 J.P. 164.

uniformity and to save time the Local Government Board has published a series of so-called model bye-laws. By adapting these with the smallest possible modifications the local authority may avoid the danger of having its bye-laws disapproved. In this control over a considerable portion of the sub-legislative province allotted to local authorities there is realised one of the strongest tendencies towards centralisation.¹ The sphere of influence and the sub-legislative power possessed by the Board are thus carried beyond the line previously drawn with a view to introducing the utmost possible uniformity of government from end to end of the country. Nevertheless, in the main, these two functionaries of internal administration—the local corporations and the central authority—may be said to exert a similar power of sub-legislation. These subsidiary laws, whether orders or bye-laws, are passed merely for the purpose of interpreting and carrying out the law itself. The omnipotence and sovereignty of the rule of law in England have impressed themselves not only on the Orders issued by ministerial offices, but also on the bye-laws and regulations passed by the local authorities. So much, then, for the quasi-legislative powers of the Local Government Board in regard to public health.

It has been remarked above that the inspection of public health is organised differently from the inspection of poor relief. A constant superintendence of local sanitary authorities by general inspectors would have involved the right of intervening at any moment in the local administration of public health; and this was too repugnant to the traditions of public life in England to be employed as a remedy for evils less gross than those of 1834. Accordingly, the ordinary supervision of public health is entrusted to the medical officers of the local authorities, and is merely strengthened by the connection between those officers and the Local Government Board. As

The Board as
inspector of
public health

¹ This perhaps is not wholly good, as it tends to create a rigid uniformity in building and other bye-laws, where elasticity is required owing to the different conditions and problems of different parts of the country. It may be urged on the other side that reasonable deviations are always allowed; and there is a separate series for rural districts. One of the main objects of the building bye-laws is to prevent fire, and the measures and precautions needful for this purpose do not vary.

the medical officers are bound to make periodical reports to the Board on the sanitary condition of their districts, the central department has a constant source of valuable information with regard to the modes in which the laws of public health are being carried out in the different parts of the country.

The activity of medical officers and of the inspectors of nuisances under them is in a sense the mainspring of sanitary administration. They are the paid local officers of representative local authorities. But the Legislature, by prescribing for these local officers certain conditions of dependence upon the central authority, has given the latter a potent leverage on the work of local government. Under the code of public health all local officers whose salaries are paid wholly or partly out of money voted by Parliament are, like the Poor Law officers, dependent upon a minister responsible to Parliament. Most of the medical officers of urban and rural sanitary districts, and the inspectors of nuisances, come under this category; accordingly the Local Government Board regulates by its own departmental order the conditions under which they may be appointed and dismissed, as well as the duties which they are to perform. The Board can dismiss an undutiful officer; on the other hand, it is for the local authority in the first instance to make the appointment and prescribe its duration. But if a local authority dismisses or suspends its sanitary officer, the Local Government Board may restore him if it thinks fit. There is another provision, which emphasises the national importance of the functions of a local official like the medical officer of health, upon whose annual and special reports the Government has to rely for its knowledge of the state of public health in a particular district. The Legislature provides that in case the local sanitary authority fails in these duties, the central authority may refuse to grant the County Council the certificate which is a necessary and prior condition to the payment of the grants-in-aid annually assigned for the salaries of sanitary officers. Such a refusal involves the offending district in serious financial loss, and would bring the wrath of the ratepayers upon those responsible, whose conduct has deprived them of the grant and caused their district rate, and may be their

death-rate also, to rise. So that this peculiar device powerfully assists the Local Government Board and serves as a bulwark to the control which it exerts on behalf of the State over the local administration of sanitary law.

But the Board has a further and more general administrative control, not only over Poor Law and sanitary authorities, but over all other branches of local government, in virtue of a financial authority exerted through many channels, but first and foremost through the Central Audit, which searches and scrutinises all local accounts other than those of Borough Councils. But the institution of district auditors has been so ^{and controller of local expenditure.} fully explained in earlier pages that we may pass on to a second function of financial supervision, which is of greater importance in this more general sphere of local administration than in the particular province of the Poor Laws. The work of Town Councils, District Councils, and County Councils involves a larger capital expenditure every year than the work of Guardians. Hence the former are more often compelled to borrow; and for this purpose the consent of the Local Government Board is necessary. If the sum proposed to be borrowed would, with the balances of outstanding loans, exceed the assessable value of property in the district, the Local Government Board may not sanction the loan until one of its inspectors has held a local inquiry and made a report.¹ Even where a local inquiry is not expressly required by law, it may be, and in nearly every case is, held at the discretion of the Board, and in this way the Board obtains from time to time direct and trustworthy information about many weighty problems of local government.

Thus many different ways and means of control are open to the central authority. But although the Legislature in reforming the whole system of local government has created a central administrative control over all the local authorities in England, that control cannot be said to have involved a bureaucratic form of government. Only in a few cases where the local authority has failed in its duty of carrying out the law is the central authority empowered itself to undertake local work, and then only after an order fixing a time within which the

¹ Public Health Act 1875, sec. 234 (3).

duty must be performed has been disregarded by the "defaulting" authority. Intervention is then dictated by practical necessity and not in the least by any theory of a supreme King or a supreme State. Neither the King nor the State may directly interfere with a local community of citizens in the self-management of its own affairs and interests

Where the
Board may make
itself a local
administrator.

unless its representatives have distinctly failed to perform the obligations imposed upon them by the representatives of the nation. Such a necessity is not held to have arisen until the attention of the central authority has been called to it by a petition or complaint made by any person or persons with a real interest in the matter. Nor is a mere complaint against the conduct of a local authority enough to procure the intervention of the Local Government Board. The complaint must touch the obligatory sphere of the local authority—that is to say, it must be concerned with the performance, or rather neglect, not of a power but of a duty. Thus, to take one of the least unusual cases, if a local authority makes default in its duty of establishing and maintaining a proper system of drainage or water supply, and such default constitutes a danger to public health, or again, if it neglects to perform one of those duties which are of general importance to the public, such as the removal of nuisances dangerous to health, then, but only then, does the Local Government Board become a compelling authority, and the local council a subservient one; only then does the law recognise a power in the centre to compel, and a duty in the circumference to obey. The procedure in such a case is regulated by the Public Health Act 1875 (sec. 299) as follows:—On receiving a complaint the Board is bound to ascertain by means of a local inquiry whether in fact the local authority has been guilty of "default" in the technical sense of the word; and it is for the Board in its discretion, after "due inquiry," to decide whether the local authority has been guilty of this administrative offence or omission. If the decision is against the complainant he has no remedy in the Courts. At least the Courts have refused to grant a *mandamus* to compel the Board to make an order of this kind on the ground that no duty is imposed on the Board until the Board is itself satisfied of culpable

neglect.¹ If, on the other hand, the Board decides that a default has been committed, its next step is to issue a special order commanding the local authority to fulfil its duty and make good its default within a given time. If the local authority still fails to comply, then two courses are open to the Board. It may either proceed in the Courts of Law and obtain a *mandamus* directing the local authority to fulfil its statutory duty under pain of incurring the penalties which follow contempt of Court, or it may institute a kind of administrative sequestration by appointing a delegate to carry out the work required, and at the same time making an order on the local authority to defray the cost of the work.² Against the order for costs, however, an appeal is permitted to the High Court. For the purpose of accomplishing his work the delegate has all the necessary functions of the local authority conferred upon him, with the exception of the right to levy a rate. If the local authority refuses to pay the expenses, the Local Government Board may within fourteen days make a second order conferring one or more special powers for the purpose of raising out of the rates the sum necessary to pay all costs in addition to the original expenditure. Every such "rate-sequestor" has all the rights of the local authority with regard to the making and levying of rates, and all the rating authorities and offices are bound to act under him. The powers of this special delegate extend even to the raising of any capital sum that is required for carrying out the work. The Public Work Commissioners are empowered to lend any sum that may be necessary for the purpose on a certificate made out by the central authority. The Local Government Board has further a right to make the payment of the interest and instalments of the loan a charge upon the rates of the district, as if the local authority had duly passed the necessary resolution.

¹ *R. v. Local Government Board, Eighth Annual Report of Local Government Board (1878-79)*, p. cviii. On the other hand, an order of this kind was quashed (25th November 1870) in the Queen's Bench on application for a writ of *certiorari*. *Town Council of Darlington v. the Secretary of State*; cf. Glen's *Public Health* for a report of the case. The order was made under the Sanitary Act 1866, sec. 49, by the Home Secretary.

² See Public Health Act 1875, sec. 299. This last course is, but rarely adopted.

To sum up: The whole motive force of government resides in the elected representatives of the people; and it is only when these representatives fail to fulfil these duties, and their local failure imperils larger interests, that the Legislature authorises a central department to bring the law into operation and force the hands of the reluctant representative body.¹

Besides those activities of the Local Government Board which have been passed in review another of a quasi-judicial character remains to be considered. Here, again, the observations already made upon the quasi-judicial function of the Board as supreme Poor Law authority may be applied to its exercise of similar functions in relation to public health and other departments

of local government. In brief, the Board is placed in the position of an arbitrator, the object of enabling it to adjudicate being to avoid delay and expense. Generally speaking, the Board is only called upon to act as judge or arbitrator in disputes arising between two or more bodies, where the question at issue is not so much a question of law as one of financial or administrative adjustments. Under the Public Health Acts provisions of this sort are mostly made for the settlement of financial disputes and difficulties. Where, for example, a rural district is divided for the purpose of laying a special district rate, the overseers of any contributory place which considers itself aggrieved by the apportionment may appeal to the Local Government Board, and the Board "may make such order in the matter as to it may seem equitable," and the order "shall be binding and conclusive on all parties concerned."²

¹ Public Health Act 1875, secs. 299-302. It would seem, however, as if this power of compulsion were of but little practical use. Cf. *County Council Times* (1898), No. 468, where a correspondence is printed between the Local Government Board and a County Council, in which the Board declares in so many words that section 299 of the Public Health Act cannot be applied.

² Public Health Act 1875, sec. 229. Other cases are: Appeals by owners and ratepayers disputing the validity of a resolution with regard to the formation of an urban district (sec. 274); further, a series of cases of pure arbitration under secs. 179, 180, where the Board was called upon to arbitrate in regard to the compensation to be paid by a local authority for land compulsorily taken; or again, where the boundary between two urban districts had to be settled (sec. 278). But these sections with regard to disputes arising out of the alteration of areas have been impliedly repealed by the County Councils Act.

In all these cases the decision of the Board is final—a clear indication that it is rather an award than a judgment. Thus, in the case of a Private Improvement Rate the owner or other person who has to pay any sum fixed or “apportioned” by the local authority may appeal to the Board for a reduction of the amount, and in this case, too, the decision of the Board is conclusive; but the appellant may, as a rule, if he prefers, take his case before the Justices, who are the ordinary Court of Appeal in disputes arising out of local government. The Local Government Board “is not a Court,” and has “no exclusive jurisdiction” in cases of this kind.¹ A more onerous and important work arises, however, out of appeals against the disallowances and surcharges of auditors. But in this respect the law of Public Health has simply adopted the provisions already laid down and previously described in connection with Poor Law administration. In these cases also an alternate mode of procedure exists; for complainants have the right of appeal to the High Court by writ of *certiorari*. But practically, for the reasons set out in the last chapter, the Local Government Board, being the cheaper tribunal, and having power to decide “on the merits,” has absorbed almost the whole of this work. It would be quite wrong, however, to suppose that in this way the Rule of Law has been undermined or the competence of the ordinary Courts impaired. An administrative authority, however substantial its functions, is never in English law a judicial court clothed with power to decide “subjective rights.” The quasi-judicial decisions of the Board must always retain the character of awards. Its jurisdiction is a subordinate jurisdiction, concerned rather with business and finance than with law; and it has won a foremost place in this restricted sphere because of the cheap, fair, and business-like settlement which it offers. Local authorities find in it a tribunal on the whole well fitted to adjust the difficulties which constantly arise between them. How large an amount of business these quasi-judicial functions entail is proved by the annual returns of the Board. Thus in the year ended 31st March 1899, 3717 objections were raised by the district auditors to the accounts of local

¹ Mathew, J., in *Eccles v. Wirral Rural Sanitary Authority*, *Law Reports*, 17 Q.B.D. p. 112.

authorities.¹ From 2371 of these appeal was made to the Board. In 1882 cases the appeal was allowed on its merits; in 161 cases a restitution of the money illegally expended was enforced; in 277 cases the decision of the district auditor was reversed.

To take a bird's-eye view of the whole province occupied by the Local Government Board is now possible, for its activities have now been reviewed in all their amplitude and variety. No room is left for surprise that the increasing load of work during the last decade has proved too much for the staff, and has often resulted in delay and confusion. Local authorities often complain of the roundabout methods

The extent of
the Board's
operations.

of the department, and its exasperating "Red-Tapism" is constantly criticised in Parliament and in the press. It may be conceded that many of these complaints are not altogether ill-founded. The slow-paced bureaucratic walk of the Local Government Board, even when it is not merely marking time, contrasts sharply with the informal way in which a local authority, often composed of business men in a hurry, likes to push through its business. Nevertheless, the quantity and quality of the work which the Board accomplishes every year are certainly enormous and worthy of high praise. The Annual Reports of the department give a good insight into its functions. A very large part of the Board's business arises in the course of its duties as the financial guardian or superintendent of local authorities. According to the Report of 1898-99, the Board in that year approved of loans to the value of £5,763,000 to about 520 borough and urban district councils under the Public Health Acts. In many cases more than one loan, often ten or twenty in the same year, were applied for by a single town and examined by the Board; for, as a rule, it is the practice to raise a separate loan for each separate undertaking. In the amount of £5,763,000 were included £1,058,164 under the Electric Lighting Acts, divided among 57 towns, £111,740 under the Housing of the Work-

¹ County Councils, 99; Poor Law authorities, 2033; Parish Councils, 345; School Boards, 317; Library Committees, 23; Urban District Councils, 521; Rural District Councils, 257; Highway authorities, 105; and other Local Bodies, 17. See *Annual Report*, 1899, p. 642.

ing Classes Acts, and so on. Further, the Local Government Board consented in the same year to borrowings amounting in all to £440,000 by 148 rural district councils, and to £23,335 by parish councils; nor do these figures include London, which is also under the same financial tutelage. Nearly all these applications involved local inquiries by engineering inspectors of the Board. Thus in the year under consideration 42 simple inquiries by inspectors were undertaken in connection with County Councils alone, and nearly 1200 in connection with other local authorities.¹

Again, as an accessory to Parliament, the Local Government Board issued in the same year (1898-99) 295 Orders under the Acts of 1888 and 1894, of which number 45 were Orders confirming the Provisional Orders of County Councils, and 154 were Orders conferring the powers of a Parish Council upon Urban District Councils. In the sphere of Poor Law administration no less than 1062 Orders were issued—a sufficient testimony to the intensity of the Board's control over Guardians. Finally, under the Public Health Acts and other statutes, 470 Orders were issued, dealing almost entirely with the organisation of local government. To these should be added 16 Confirmation Bills introduced by the Government and passed through Parliament for the purpose of giving statutory force to a great number of the Board's Provisional Orders. Indeed, the power and time of the department are often severely taxed by the part which it must necessarily play in local legislation, both of a public and private character. Then there are a vast number of reports and returns dealing with internal administration, some regular and periodical, others prepared in compliance with the expressed wishes of Parliament. Some of these returns are promised by the Government at the request of some private member, and occasionally entail a good deal of useless work. The statistics of Poor Law administration and local finance are in themselves monuments of accurate and elaborate industry. The Board finds plenty of scope for activity in its official correspondence with local authorities—now advising, now warning, now explaining and interpreting new statutes.

¹ See *Twenty-Eighth Report of Local Government Board*, p. cxx.; also *Report of Departmental Committee*, 1898.

But on the top of all this regular work there were in the year in question large and important Orders promulgated by the Board, such as a new Order regulating the public administration of the Vaccination Laws, which provoked much opposition in certain localities. Lastly, there are the reports of the inspectors of the Board, extending over the whole province of Poor Law government, which, with the leading statistics, are for the most part incorporated in the Annual Report, and serve to illustrate the administrative work of a modern central department, which is justly recognised as a model abroad as well as at home. A study of the Annual Reports makes abundantly clear what it is that so entirely distinguishes the English type of centralisation from that of a continental ministry of the interior. It is true that in England itself complaints are sometimes heard of a growing tendency to bureaucracy; that is due to the extreme sensitiveness which every Englishman feels as to any usurpation of mandatory power by any department of Government. But, from the standpoint of continental administration, these alleged tendencies are trifling; and the central administration of England has, as its peculiar mark, a half scientific, half statistical character. The relations of local to central government resemble those of fellow-workmen engaged in a similar task. The Local Government Board is emphatically not a motor engine; it does not supply power to set in motion the machinery of local government; and in practice the Board takes the initiative even less than the letter of the law might lead one to suppose, the reason really being no doubt that the statesmen who preside over the departments of Home Government, irrespective of party, share more or less in this traditional abhorrence of the nation from any and every kind of administrative direction over public life. Nothing is so jealously guarded in England as this trait of national life and policy, and nothing would more rapidly and more surely bring a Minister and his department into unpopularity than a popular suspicion that he was trying to govern the country on bureaucratic lines. Nothing could be more disquieting to an average Englishman than the thought that he must follow the orders of a London bureau as if they were so many provisions of the law. He will not tolerate a bureaucratic State within a State,

or allow an official department to pose as an embodiment and personification of the State itself. Although at times slight encroachments may be made upon this tradition, and the nation may acquiesce without much trouble, in certain changes, such as those proposed and partly carried by the champions of Poor Law and sanitary reforms, yet no one should delude himself into supposing that in these cases the Legislature was following out a principle or tendency, or, in fact, doing anything but improvise practical remedies for practical evils. The ancient rule that England is governed according to law, and not according to the instructions of officials, remains unshaken to this day.

CHAPTER V

OTHER CENTRAL DEPARTMENTS OF INTERNAL ADMINISTRATION

ALTHOUGH at the beginning of the twentieth century the Local Government Board already superintends the larger part of the province of internal administration, yet the Board is by no means the only central department with control over local government. One great branch of administration, the control of police, belongs to the Home Office. Education—another quasi-local service of supreme importance—is under the superintendence of the new Board of Education. Again, the Boards of Trade and Agriculture exert a number of regulative functions in relation to local authorities. Lastly, by the side of these permanent departments there are certain temporary organs known as Royal Commissions of Inquiry—highly characteristic institutions, which play an important part in legislation and government. In the following chapter these branches of central administration will be briefly described in their bearings upon English local government.¹

I. *The Home Office and the Central Control of Police*²

The outlines of what has already been said in various parts of this work must be retraced here. But first of the

¹ This chapter, of course, is not all concerned with many of the most important departments, and does not profess to describe, as a whole, even those with which it deals. For a general description, cf. Gneist, *Englisches Verwaltungsrecht*, 1867, vols. i., ii.; also, for a later authority, Lowell's *Parties and Governments in Europe*; Anson's *Law and Custom of the Constitution*.

² For an account of the Home Office, see Anson's *Law and Custom of the Constitution*, vol. ii. p. 227 sqq., and Hazell's *Annual*. For the older police statutes, see Burn, *Justice of Peace*, sub. "Constable." The police

Home Office. The department of the Home Secretary has gradually evolved into one of the most important organs of State. Its main concern is with police functions, taking that term in its wide sense. The Home Secretary has special authority over London, for the Metropolitan police force is directly under his control, and he has also to supervise in London the Housing of the Working Classes Act. The Acts relating to mines, factories, and workshops are enforced throughout the country by the Home Office by means of a large staff (180) of inspectors; and the department is brought into direct contact with local authorities, not only as police superintendent-in-chief, but also because, as we have already seen, many of the bye-laws made by municipal boroughs and County Councils may be disallowed by the Home Secretary. The Acts relating to the treatment of inebriates, the protection of wild birds, and the prevention of cruelty to children all give administrative and regulative powers to the Home Office, which is also entrusted with the inspection of reformatories and industrial schools.

In the historical sketch it was shown that the reform of police administration was begun contemporaneously with the reform of other branches of local government. Under the older system the maintenance of the peace was entirely in the hands of the Justices in town and county; but for the executive work of police there was no single or uniform organisation in these jurisdictions. The execution of all orders and regulations necessary for keeping the peace devolved upon constables appointed by the parishes under the superintendence of the Justices. How the system broke down at the beginning of the nineteenth century and failed to satisfy the needs of a new era,—how it was then sought to introduce reforms by way of local and adoptive Acts until the decisive step was taken in 1856,—need not again be related.¹ In that year a statutory duty was laid upon counties and boroughs to create in their districts a uniform police organisation, and to defray

organisation in counties is based on 2 and 3 Vict. c. 93, 19 and 20 Vict. c. 69, and other statutes extending from 1839 to 1888; cf. further Wright and Hobbhouse, *op. cit.* ch. x.; Maltbie, *Local Government*, p. 117 *sqq.*; Sidney Webb, "The Local Government of To-Day" (Lectures printed in *Municipal Journal*, 1899, especially in No. 358).

¹ Cf. vol. i. pp. 170-171.

its cost out of local rates. At the same time, other permissive provisions of the earlier reform of 1839 were made obligatory.¹ In its main features the police system thus established resembled in its organisation the other branches of reformed local government. It was uniform, and it was managed by local authorities under central control. The origin of a paid force under central control may be traced, curiously enough, to legislation by the Irish Parliament. In 1786 Grattan's Parliament passed a Police Act for Dublin by which a paid police force was organised under the command of three Commissioners. In the following year the system was extended to the whole of Ireland by the creation of the Royal Irish Constabulary. The first attempt to set up a similar organisation in England was the Middlesex Justices Act of 1792, which gave every police magistrate in London the right to appoint six paid constables. The results of this reform suggested the legislation of 1829, by which Sir Robert Peel established the Metropolitan Police Force.² The general Act of 1839 was based on a thorough report issued by a Royal Commission, which exposed in unsparing language the dangerous condition of the roads in many parts of the country, and the absence (owing to utter lack of a regular police force) of proper security for life and property.³

Since 1856 counties and municipal boroughs have been practically the sole and exclusive local police authorities in England, outside the Metropolis. The Quarter Sessions in the counties and the Watch Committees in the boroughs were charged by statute with the management of the forces. Not that the older chaotic organisation was actually abolished; it was only practically superseded. Indeed, the Parish Constables Act of 1872⁴ expressly recognised the right of every parish to have parish constables. That right might even now be re-

¹ The reports of the inspectors of constabulary show that twenty counties had not adopted the Act of 1839. The county of Rutland, with 22,983 inhabitants, was still satisfied with one constable.

² Cf. Parker's *Sir Robert Peel from His Private Papers*, vol. i. p. 432; vol. ii. p. 41.

³ *Parl. Papers*, 1839, vol. xix. pp. 180-181; and Maltbie, *op. cit.* p. 118.

⁴ 35 and 36 Vict. c. 92.

vived at any time by the simple resolution of a parish council or vestry, and thereby the parish constable of the old law, so long deceased, might be brought back to life. But a parish constable, though appointed by the Justices on the resolution of the parish, would be amenable to the orders of the Chief Constable of the county, so that an independent parochial police is now out of the question. It is, therefore, correct to say that from 1856 until 1888 the County Magistrates and Borough Councils were, in theory as well as in practice, the only bodies outside the Metropolis entrusted by law with the management and direction of the police. In all county boroughs the statutory Watch Committee appoints and dismisses constables, organises the service, and controls the expenditure. The larger towns are divided into police districts, and a force with a superior officer or superintendent assigned to each; but there is no such thing as an independent director of police. On the contrary, the Chief Constable, who has, as it were, the military command of the force, is entirely subordinated to the Watch Committee. This form of organisation, founded by the Municipal Corporations Act of 1835, has remained undisturbed ever since. The scheme of county police is different. Since 1856 there has been a change in the constitution of the county police authority; for, by the Act of 1888, as we have seen, the management of the county police was transferred from Quarter Sessions to the Standing Joint-Committee, composed half of Justices and half of County Councillors. Accordingly, the county police authority is not, like the Watch Committee, a purely elective body. But this is not the only difference between the two, for in the counties there has been interposed in the office of Chief Constable a third authority, who stands between the administrative Joint-Committee and the County Constabulary itself. The position of the Joint-Committee in reference to the County Council on the one hand and the Chief Constable on the other has been described in a previous chapter.¹ Here it is only necessary to repeat that in counties the Police Committee is concerned mainly with the maintenance of the necessary buildings, the provision of apparatus and uniforms, and the defrayal of expenditure. For the direction and disposition of the force

¹ Cf. p. 71 of this volume.

and most of the executive work the Chief Constable is wholly responsible.

From another point of view the Act of 1856 is of epoch-making importance in the development of police administration. It created a central supervision of all the police forces in the country. The Home Secretary's consent was made necessary to the appointment of the Chief Constable, and also to any resolution for increasing or diminishing the constabulary, or for dividing a county into police districts. At the same time, a certain limited right of issuing Orders was accorded to him. He was empowered, for example, to make General Orders with regard to the payment, clothing, discipline, and equipment of constables and their officers; but as this right was at first only operative in those counties which had adopted the Act of 1839, the influence of the Home Office upon police affairs remained for some time fragmentary. The principle of *laissez-aller* had to be maintained by the central authority in respect to the very counties where intervention was most needed—in those, namely, where the old bad conditions still prevailed, owing to their non-adoption of the earlier Act.

The great achievement of the Act of 1856 was to put a complete end to the voluntary principle in English police organisation. Henceforth it was incumbent upon all counties and towns to bring their police force up to at least a certain standard of efficiency. No English statesman ever dreamt of setting up a police ministry on the continental model. That the peace should be maintained by independent bodies in county and borough is an unshaken principle of the English constitution. Any attempt to set up a central department with power to lord it over the local authorities would be regarded as a direct encroachment upon the constitutional rights of citizens. It would be treated as an attack on the independence of the courts of law, and must inevitably fail. On the other hand, the leaders of conservative opinion would readily agree with liberal and radical statesmen that a return to the complete decentralisation and independence of local police authorities which characterised the older system is unthinkable. It is universally recognised that the methods of prevention and detection used by the police should be

similar in all parts of the country. But in 1856 the champions of centralisation had just been taught by the fate of the first Board of Public Health how strong were the national prejudices against any form of central control which presented the faintest resemblance to a foreign type. Accordingly, the reformers of the police system had to proceed on their way with the utmost circumspection when they approached the problem of uniformity.

Police inspection, 1856.

The Act of 1856 created a new central authority in subordination to the Home Secretary. Three State-paid inspectors of police were appointed. At the same time an order was made that all police authorities in boroughs and counties should make an annual report of their work to the inspectors, who were further empowered and commanded "to visit and inquire into the state and the efficiency of the police in every borough and county, and to report the same to the Secretary of State." Thus a central authority was established with far-reaching powers of inspection over all the police forces of the country, but without any right to impose its will directly upon any local authority, or to issue orders to any local constabulary. Neither the inspectors nor the Secretary of State were entitled to act upon their information by issuing injunctions to local police authorities. The main object of the reform was to secure an efficient superintendence of police administration; and this object was only partially attained by centralising information. It was essential, in order to give a practical value to the results of the reports and inspections, to find some lever which might be used by the Home Office for the removal of acknowledged deficiencies. To this end a peculiar device was invented by the Legislature. Instead of a direct administrative compulsion, which is so difficult to carry out in England, an indirect mode of bringing pressure to bear upon the local authority was discovered and intrusted to the Home Office. Section 16 of the County and Borough Police Act 1856 begins as follows:—

Upon the certificate of one of Her Majesty's principal Secretaries of State that the police of any county or borough established under the provisions of the said Acts and this Act, or any of them, has been maintained in a state of efficiency in point of numbers and discipline for the year ending on the 29th of September then last past, it shall be lawful for the Commissioners of Her Majesty's Treasury to pay from time

to time out of the moneys provided by Parliament for the purpose such sum towards the expenses of such police for the year mentioned in such certificate as shall not exceed one-fourth of the charge for their pay and clothing.¹

By this provision the new system of central control over police was perfected. Beyond an increase in the subvention from one-fourth to one-half in the year 1888, there has been no further advance upon the road of centralisation, so satisfactory are the results achieved by this latent and conditional form of control. In the last two decades, however, there has been a growing tendency, encouraged by the Police Acts, to concentrate the local organisation of police in the hands of a smaller number of authorities.

By the Act of 1888 municipal boroughs of less than 10,000 inhabitants lost power to maintain a separate police force, and since 1882 all towns of less than 20,000 inhabitants, which obtain charters of municipal incorporation, have remained under the control of the county police.² By merging the police forces of all small towns in the county and subjecting them to county management, it is sought to prevent partiality, to avoid unnecessary waste of administrative force, and to enable the ratepayers to profit by the economy of large operations. To the same ends Parliament provided, so long ago as 1840,³ that municipal boroughs might agree to place their police under the Chief Constable of the county, and this policy is often favoured by public opinion as well as by the

¹ 19 and 20 Vict. c. 59. Section 16, partly quoted above, continues and concludes as follows: "But such payment shall not extend to any additional constables appointed under the 19th section of the said Act (3 and 4 Vict. c. 88); provided that before any such certificate shall be finally withheld in respect of the police of any county or borough, the report of the inspector relating to the police of such county or borough shall be sent to the Justices of such county, or to the Watch Committee of such borough, who may address any statement relating thereto to the Secretary of State; and in every case in which such certificate is withheld, a statement of the grounds on which the Secretary of State has withheld such certificate, together with any such statement of the Justices or Watch Committee as aforesaid, shall be laid before Parliament."

² See M.C.A. 1882, sec. 215. The movement indeed began earlier; for by an Act of 1876 it was provided that grants-in-aid of police should only be made to municipal boroughs with more than 5000 inhabitants. In this way 50 borough police forces were eliminated, cf. Arminjon, *op. cit.* p. 155.

³ Cf. the County Police Act of that year (3 and 4 Vict. c. 48 sec. 14).

central authority, which has power to impose terms on the county by Order in Council. In 1894 about 50 boroughs with more than 10,000 inhabitants were policed by the county.¹

The English form of police control combines a number of advantages, principal among which is its compatibility with the traditional autonomy of the local police authorities. This peculiar form of centralisation, which braces and stimulates the local authorities to perform their statutory duties without impairing their dignity, has ^{Advantages of English police control.} enabled the Home Office to superintend local police forces, and gradually to raise the general standard of efficiency without arousing the national antipathy to a State police. For this system does not, as we have observed, make the Home Office the supreme police authority, like a continental ministry of the interior; nor does it in any way authorise the Home Secretary to direct and dispose of local police forces; nor, finally, does it give any right of interference in the concrete police administration of counties and towns. What the law really gives to the central authority is power to fix a standard of efficiency for the whole country and to determine whether the police machinery is in good order and fully adequate to the performance of duties imposed by statutes or arising from local emergencies. Should the Home Office be dissatisfied, even then the minister has no power himself to remedy the deficiency by direct action. All that he can do is to inflict a heavy fine upon the defaulting authorities by withholding the grant—an appeal indirect indeed, but well understood, to the interests of the ratepayers, who elect the whole of the Watch Committee in the towns and half the joint-committees in the counties. In practice the financial argument has proved to be irresistible. An apathetic Home Office is a more probable phenomenon than a recalcitrant police committee. There is no instance in recent times of a local police authority actually losing its grant.² The mere threat of a withdrawal of the grant has always been enough to secure compliance with the

¹ Cf. Wright and Hobhouse, p. 53.

² For the case of the River Tyne Police see *Local Taxation Return* (1901, No. 345), p. 23.

demands of the Home Office. Here, again, the efficiency of local government in England is shown to be dependent upon the responsibility of local councils to their constituents. The influence of the Home Office over police is based upon the interests of the ratepaying elector. The responsibility of a representative to the ratepayers serves as a safety valve to the engine of local administration. This system is firmly rooted in the idea that the maintenance of an effective police is required first and foremost in the interests of the local community.

The following statement, from the pen of a distinguished economist, explains and exposes from a purely financial point of view the absurd and eccentric intricacies which have been woven into the police system:—

It is well to begin by distinguishing the county and county borough police from the non-county police-borough police. The non-county boroughs do still get half cost of pay and clothing from another source than their rates, and if they increase the cost of pay and clothing they do get more from that source. The source, however, is not the Exchequer, but the administrative county and the rates of that area (which, of course, for this purpose includes the non-county boroughs). This is a small matter—less than £100,000 a year in all England.

The counties and county boroughs, on the other hand, have to bear the whole brunt of any increase, and get the whole advantage of any decrease in the cost of their police. The counties and county boroughs as a whole are paid the proceeds of certain licenses—80 per cent of half the probate duty (or what would have been the probate duty if it still existed), and 80 per cent of 3d. a barrel on beer and 6d. a gallon on spirits, less £300,000 for police pensions. None of these amounts vary with the cost of police. The total is divided between the geographical counties—part (the licenses) according to the yield of the licenses, and the other parts according to the amount of “discontinued grants” paid in 1887-88. Further, the amount going to each geographical county is divided between the administrative county or counties and the county borough or county boroughs—sometimes by special agreement, but generally according to rules laid down by the Derby Commission, viz. a fixed amount to each, equal to certain grants or expenses in 1887-88, and the rest according to rateable value. The present cost of police obviously does not determine any of these things, though, as half cost of pay and clothing was one of the “discontinued grants,” the cost of pay and clothing *fifteen years ago* has something to do with fixing the cast-iron proportions in which the estate duty and excise grant is divided between the geographical counties, and also a little to do with the division of the geographical county's share between the administrative county and the county boroughs.

The Local Government Act 1888 requires the administrative county or county borough to put its receipts from the Local Taxation Account (which is the Exchequer) into an "Exchequer contribution account." From this the county is obliged to take (as well as certain grants to unions, etc.) half the cost of paying and clothing its own police, and half the cost of paying and clothing the non-county borough police. The first item it pays to its police account; the second goes to the non-county police borough Watch accounts. Obviously the more that comes out in this way the less there is left to go towards general expenses. Similarly, out of its Exchequer contribution account each county borough has to take half cost of paying and clothing its own police and pay it into the Watch account. Obviously the more that goes in this way the less there is left to aid the borough rate, and so, as the rest of the Watch Committee's expense falls on the borough rate, this half-and-half business is mere tomfoolery. I believe when the system was first introduced, the council of one city did not take the half out of the Exchequer contribution account, seeing it made no difference and only confused its finance, but the Local Government Board objected.

The Metropolitan police, instead of half pay and clothing, get an amount equal to 4d. in the £ of the rateable value from the Exchequer contribution accounts of the various counties and county boroughs (but just to add confusion this is paid direct to the Metropolitan Police Commissioner from the Treasury); so if the Kent parishes in the Metropolitan police area rise in rateable value, all Kent suffers.

The £300,000 a year for police pensions is fixed, so far as the Exchequer is concerned, and also so far as distribution between Metropolitan police area and rest of England is concerned—half going to the Metropolitan police and half to the rest of England. But the county £150,000 is divided between all police authorities (including non-county police boroughs) in a way which does make it dependent in a complicated way on expenditure for pensions. But this is obviously a very small matter.

Believers in the continued existence of the Exchequer police grant, which was discontinued in 1888, when confronted with these considerations, sometimes fall back on the fact that the Home Secretary is a sort of bogey-man who has power to raise the ghost of the old police grant by "withholding," as it is put, half the cost of pay and clothing of the police if he considers a force inefficient. As to this, it may be remarked—first, that this provision does not exist, and would obviously be absurd so far as the Metropolitan Police are concerned; secondly, that if the grant is withheld from a non-county borough, it is the administrative county, and not the Exchequer, which retains it; and thirdly, that as to the county and county borough police, the words of the Local Government Act 1888 are, that the county or county borough "shall forfeit to the Crown and shall pay into Her Majesty's Exchequer" such sum as the Secretary of State certifies to be in his opinion equivalent to one-half of the cost of pay and clothing in the year in which the police were inefficient. If in the next year the county or county borough spend less and have a still more inefficient police force, the fine for that year will be less. How this curious calculation of the amount of the fine for

inefficiency can be supposed to keep in existence a grant discontinued fifteen years ago passes comprehension.¹

Unnecessary and absurd, however, as this financial confusion must appear, its evils are less serious in practice than in theory. And from an administrative point of view the power to withhold grants has had the desired effect. England has obtained a generally efficient system of police without taking a single step on the road to a "Police State." Here, again, the central control which has been established is entirely in accordance with English conceptions and traditions, and is strictly measured by the practical needs of administration. The Home Office is in the position of an Inspector-in-Chief, who, by regular communications and correspondence with the local authorities, gets accurate information from all parts of the country, and by keeping in touch with actual administration becomes the adviser without becoming the dictator of local authorities. Here again the utmost that the English rule of law allows to a department of government is the financial pressure involved in granting or refusing taxpayers' money to the relief of local rates.

II. *Board of Trade*²

The Council for Trade and Plantations was abolished in 1782, but in 1786 a new Committee of Trade and Plantations was established by Order in Council. Its functions were at first purely consultative; but, gradually—mainly in consequence of railway legislation—it came to be one of the most important administrative departments of the central government. Its popular title of the Board of Trade was first recognised by statute in 1862. Its chief is called the President.

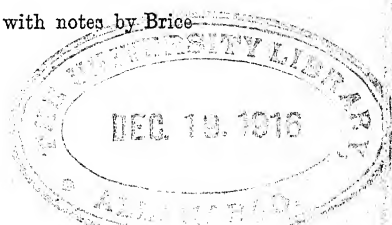
The Board of Trade has no regular administrative connection with the local authorities as such. The principal

¹ The above exposition of the police grants was contributed by my friend, Mr. Edwin Cannan, in a letter to the *Speaker* (29th November 1902). As the subject is not fully treated in any of the text-books, I asked his permission to reproduce his statement, and he most kindly consented.—F. W. H.

² Cf. Traill, *Central Government*, p. 123. The principal Acts of Parliament affecting the constitution of the Board of Trade are 22 Geo. III. c. 82 (1782); 7 Geo. IV. c. 32 (1826), which assigned the President a salary of £2000; 24 and 25 Vict. c. 47; and 30 and 31 Vict. c. 72. See also article on Board of Trade in *Encyclopædia of the Laws of England*.

function by which the Board of Trade is brought into relationship with local government is that of granting concessions or licenses authorising local authorities to undertake the supply of gas, water, tramways, or electric light in their districts. It may, by provisional order, authorise the construction of piers, harbours, etc. It is also the duty of the Board to superintend harbour authorities. Bye-laws framed by harbour authorities under the Petroleum Acts for landing cargoes of petroleum have to be confirmed by the Board, which has also to verify every apparatus used for testing petroleum. Another function has recently been conferred by Parliament on the Board of Trade by the Light Railways Act of 1896.¹ By this Act a body called the Light Railways Commissioners has been established under the Board to examine and deal with all petitions made by towns, counties, and districts for authority to make light railways. The procedure is prescribed by the Commissioners, and any scheme approved by them is embodied in the form of an Order, and laid before the Board of Trade for confirmation. If the Commissioners refuse to grant an Order, the promoters may appeal to the Board, which may then itself make or refuse the Order. If the project is a very large one, or is likely to affect seriously the interests of existing railways, the Board of Trade may lay the Order before Parliament; otherwise an Order, once it has been made or confirmed by the Board of Trade, obtains the force of law without being laid before Parliament. This is a distinct innovation upon the law of English administration, and marks the highest point hitherto touched by Parliament in strengthening the powers of a central department. Private Bills affecting harbours, electric telegraphs, and other undertakings which are within the scope of the department are considered by the Board of Trade, and the Board may suggest amendments. Another illustration of the connection between the Board of Trade and local government may be found in the Municipal Corporations Act 1882 (sec. 214). Any scheme in connection with the grant of a municipal charter must be referred for consideration to the Board of

¹ 59 and 60 Vict. c. 48. The statute has been edited with notes by Brice in his *Light Railways and Tramways*, London, 1897.



Trade if it affects a harbour authority. The Board of Trade is divided into seven departments: (1) Statistical and commercial; (2) railways; (3) marine (merchant shipping, sea fisheries, etc.); (4) harbours; (5) finance; (6) fisheries; and (7) bankruptcy. Each of these departments is employed in carrying out a separate group of enactments.

III. *The Board of Agriculture*¹

This department is a creation of the nineteenth century, having grown up out of various bodies. It was created for the purpose of looking after the general interests of agriculture in Great Britain. It superintends the improvement and inclosure of land, looks after markets and fairs, and takes precautions to prevent the spread of certain infectious diseases among cattle and other animals. In 1851 the Tithe and Copyhold Commissioners (1836) and the Inclosure Commissioners (1845) were merged.² The department was reorganised in 1882 under the name of the Local functions of the Board of Land Commissioners. Finally, in 1889, a new Agriculture. department of agriculture called the Board of Agriculture was formed. To it the work of the Land Commissioners was transferred, as well as a number of functions exercised by the Local Government Board, the Board of Trade, and the Privy Council. Its chief, the President, is usually a member of the Cabinet, and always of the Ministry. At the head of the permanent staff are the Secretary, three Assistant Secretaries, and a Legal Adviser. Two other important officials attached to the Board are the Chief Veterinary Officer and the Chief Agricultural Analyst. In London the Board has two main offices. One is at Whitehall, its business being divided into the Animals Division (which has an indoor and an outdoor branch) and three branches for Intelligence, Education, and Accounts. The second office is in St. James Square, and may be described as the Land Division. It has to do with inclosures, commons, and many copyhold, tithe, and land Acts. It has also a statistical branch, a law branch, and veterinary department. The Ordnance Survey is also conducted by the

¹ I do not know of any book on the Board of Agriculture.

² By 14 and 15 Vict. c. 53.

Board, but the Survey has its headquarters at Southampton. The Board of Agriculture has administrative relations with the councils of counties, and of boroughs of more than 10,000 inhabitants under the Diseases of Animals Acts 1894 and 1896;¹ as well as many duties and powers under a variety of Acts passed to encourage and protect agriculture, which have to be carried out under, and in accordance with, its orders and regulations. Thus the Board issues Orders for the suppression of rabies and other diseases under the Diseases of Animals Acts 1894 and 1896, and also Orders under the Destructive Insects Act 1877. Of all the Acts administered by the Board, the Diseases of Animals Acts are the most important, and involve the largest amount of work. How great are its powers under them may be indicated by a reference to two sections of the Act of 1894, which consolidated previous law on the subject. By section 2 "The local authorities in this Act described shall execute and enforce this Act and every order of the Board of Agriculture so far as the same are to be executed or enforced by local authorities." And section 34 (1) gives the Board the uttermost power which Parliament has ever given to a central department for the coercion of local authorities: "When a local authority fails to execute or enforce any of the provisions of this Act, or of an order of the Board of Agriculture, the Board may by order empower a person therein named to execute and enforce those provisions, or to procure the execution and enforcement thereof." The Board has not yet made use of this section, and would probably be very reluctant to do so. The Board keeps in touch with the local authorities partly by means of special inspectors, partly by correspondence. Copies of orders made by County Councils and Joint-Committees have to be sent in certain cases to the Board of Agriculture. Apart from its sub-legislative powers, the main function of the Board is to collect and distribute agricultural statistics, to promote scientific methods of farming, to assist agricultural education, and to give advice and information upon questions of agricultural interest. Early in 1903 it was announced that the supervision of fisheries will be transferred to the Board of Agriculture.

¹ With which must be read the Board of Agriculture Act 1889. See Diseases of Animals Act 1894, sec. 1.



IV. *The Board of Education*¹

This is one of the youngest, though not the least important of the great government departments. At present the old division of the staff of inspectors is retained. For the purposes of elementary education the whole country is divided into about a hundred inspectors' districts, for each of which an inspector is appointed, with the title of His Majesty's Inspector of Schools. He is assisted by one or more subordinates, and there are about twelve Chief Inspectors. In addition to this there are in the office itself a number of first-class clerks called Junior and Senior Examiners. This larger branch of the Board has its office in Whitehall. The smaller branch has its office at South Kensington, and has a small number of examiners and inspectors. When a new building, now commenced, is completed, the two staffs will be amalgamated. The Board owes its present name and constitution to the Board of Education Act 1899,² under which two large departments of education—formerly Committees of the Privy Council—named the Committee of

Education and the Science and Art Department, were united into one Board, under a President and a Parliamentary secretary, who are members of the Administration and represent the Board in Parliament. Until 1899 the administrative relationship of the central to the local educational authorities was confined to elementary education; and central control here took the typically English form of central inspection, coupled with state grants-in-aid. For the purpose of encouraging local authorities this form was refined and elaborated, so that the amount of the grants-in-aid varied according to the standard of efficiency; and the central department of education was not driven, like the central police authority, to a bare choice between making and withholding the grant. But as regards elementary education, successive codes have reduced the limits of variation, until

¹ Cf. *The State in Relation to Education*, by Sir Henry Craik, 1896; Graham Balfour, *op. cit.*, and the Board of Education Act 1899 (62 and 63 Vict. c. 33), and also Traill, *op. cit.* p. 140 *sqq.* The best treatise on the law of education is by Sir Hugh Owen.

² 62 and 63 Vict. c. 33.

now there are only three possible courses: a maximum grant (22s.), a minimum of only a shilling a head less (21s.), or a withdrawal of the grant. Legislation increasing the grants-in-aid to voluntary schools and also to small necessitous Board Schools has been superseded by section 10 of the Education Act 1902:—

In lieu of the grants under the Voluntary Schools Act 1897, and under section 97 of the Elementary Education Act 1870, as amended by the Elementary Education Act 1897, there shall be annually paid to every local education authority, out of moneys provided by Parliament—

- (a) A sum equal to four shillings per scholar; and
- (b) An additional sum of three halfpence per scholar for every complete twopence per scholar by which the amount which would be produced by a penny rate on the area of the authority falls short of ten shillings a scholar.

The objects of these provisions are—First, to give further relief to the ratepayers in view of the additional burden now thrown upon them of maintaining the voluntary, or non-provided, schools. It is calculated that the total addition thus made in the contribution of taxes to rates for elementary education will amount to £1,300,000 a year. In 1901-1902 the charge on the Exchequer for this purpose amounted to £9,753,000. The second object of section 10 is the equalisation of burdens by the allocation of money to necessitous areas.

The position of “board” (now “provided”) and “voluntary” (or “not provided”) schools has been described with sufficient detail in a previous chapter. The work of secondary and higher education is still private or local; but general powers of central inspection were extended for the first time by the Act of 1899 to the intermediate schools of secondary and technical education. The extension, however, was very cautiously made, in pursuance of the principle, which underlies the history of English education, that the activity of the State should only be introduced and secondary education. for the purpose of fortifying and completing voluntary effort. Section 3 of the Board of Education Act provides as follows:—

The Board of Education may, by their officers, or, after taking the advice of the consultative committee hereinafter mentioned, by any university or other organisation, inspect any school supplying secondary

education, *and desiring to be so inspected*, for the purpose of ascertaining the character of the teaching in the school and the nature of the provisions made for the teaching and health of the scholars, and may so inspect the school on such terms as may be fixed by the Board of Education with the consent of the Treasury.

Secondary schools in Wales were already subject to inspection by the "Central Welsh Board" under the Welsh Intermediate Education Act 1889 (52 and 53 Vict. c. 40). The Act has worked well in Wales.

Section 4 of the Board of Education Act enables the King in Council, by Order, to establish a consultative committee, two-thirds of which is to consist of persons qualified "to represent the views of Universities and other bodies interested in education," for the purpose of advising the Board of Education and of passing regulations for a register of teachers. Here, then, is the first tentative effort to extend central supervision over secondary schools. A strong impulse has been given of late to the development of all forms of higher education in England, and particularly of technical education, owing to a growing belief that the industrial and commercial interests of the nation and the increasing severity of competition require a better system of industrial and commercial instruction. Until 1899 the only connection of the central government with this movement was financial, Parliament having assigned certain sums of money as well as certain administrative powers to the councils of counties and towns for purposes of secondary education. Much had been done when the statute of 1899 was passed; but there was still waste and overlapping. Accordingly the object of the new Act was, by giving a moderate amount of control to the new Central Board, to introduce a certain measure of uniformity into the province of secondary education, and to guide the local authorities to the acceptance of leading principles and methods in this branch of their work. Accordingly the Act of 1902 was intended, as we have seen, to co-ordinate elementary and higher education by merging the local authorities. But as yet no sort of finality has been reached. There is no agreement as to what is the best form of organisation for secondary schools: the question is still open and is being eagerly discussed. Complaints used to be made that the higher grade schools of some School Boards overlapped with

the secondary schools of some county borough councils. The Education Act of 1902 gets rid of this. But it can hardly be said to concentrate or unify authority even in regard to education other than elementary. From the point of view of central administration, the most interesting feature of the Education Act of 1902 is that it abolishes the power of the Board to replace a defaulting School Board by nominees of its own. Such a provision, it was doubtless felt, would be inapplicable to any but an *ad hoc* authority, though that consideration (as we have seen) did not prevent the Legislature from assigning the power to the Board of Agriculture in relation to the very same authorities as those to which the work of education has been entrusted. The power of the Board of Education to interfere with the local education authority in the constitution of an education committee is of little importance, since the executive functions of the education committees depend entirely upon the local education authority.

V. *Special Central Authorities of a temporary character—
Royal Commissions of Inquiry*¹

In passing to this last form of departmental activity—a form peculiarly characteristic of the English constitution—we are confronted by the paradox that a temporary commission has in many cases proved to be the precursor of a permanent office and the creator of a new department of English government. Originally these Commissions rested on the old right of the Crown to hold “inquests” in any part of the land for the better preservation of law and order, and a further right to delegate its executive and judicial powers for this purpose. The misuse by Tudor and Stuart kings of the royal power of delegation led, as we have seen, to the creation of the Star Chamber and other Commissions, and eventually to the general acceptance of the constitutional principle that the Crown may not clothe any new authorities with prerogative power.

But this has not deprived the Crown of its right of inquiry, and indeed that right has received a great accession of importance in an age which has seen the royal prerogative

¹ Cf. Gneist, *Englisches Verwaltungsrecht*, edition of 1867, vol. ii. p. 740 sqq.; edition of 1883, vol. i. p. 195 sqq.; Toulmin Smith, *Government by Commission Illegal and Pernicious*: London, 1849.

transformed under a system of complete Parliamentary government into the administrative weapon of a Parliamentary Cabinet. Since the beginning of the nineteenth century it has become the practice to submit pressing problems of social life and administration to the deliberate investigation of a Royal Commission of Inquiry. It is customary to appoint a number of public men and experts as colleagues on these Commissions. Until their labours are complete, they possess the full powers necessary to carry out the purposes of their appointment. They are Courts of Record, and have the power to compel the attendance of witnesses and to examine them on oath. The organisation and procedure of these Royal Commissions, whose investigations often extended over the whole country, very soon crystallised. A Commission will divide the country into suitable districts, and assign a certain number of its members and assistants to investigate the problems referred to it in each. Then separate reports are submitted to the whole body, and on the basis of these a final report with recommendations is drawn up. If the Commissioners differ, the final report consists of a majority report and one or more minority reports. In these Commissions nearly all the great English reforms of the nineteenth century originated. The Royal Commission is also the peculiar form of central activity in which Bentham's demand for the application of scientific principles to legislation and government was first realised. Not less than 150 Royal Commissions of Inquiry were set on foot between 1832 and 1844, and there is hardly a single important administrative problem from that time to the present day which has not been submitted at least once to this kind of investigation. In addition to or in substitution for Royal Commissions, Parliament has appointed out of its own members many Select Committees of Inquiry. These, in the opinion of some of the older jurists, with the learned Toulmin Smith at their head, are the only true legal forms of State inquisition. The High Court of Parliament is, in the language of this conservative jurisprudence, the Grand Inquest of the nation; whereas Royal Commissions, on the other hand, are, as Coke declared in the days of the Star Chamber, utterly illegal and unconstitutional. But the opposition of these earnest pedants, as we have seen, has been of no avail to prevent the

Royal Commission from coming into full use as one of the most important and wieldy instruments of government and legislation. The practical instincts of English politicians have thrust aside theoretical doubts and difficulties,—and with good reason, for, after all, “Royal” Commissions are only another means of Parliamentary government. Appointed by Order in Council they are really appointed by a Parliamentary Cabinet.

For the study of the history of central government in England, the reports of these Commissions and Committees are invaluable. Moreover, most of the new government departments are the direct descendants of one Commission or another, as witness the Commissioners of Poor Law, the Ecclesiastical Commissioners, the Commissioners of Public Health, and so on. In quite recent times there has occurred a further development of these Commissions into government departments, presided over by a responsible minister. And, again, central organs of a temporary character have been established for investigating administrative and social conditions of long standing. The celebrated Labour Commission, the two Royal Commissions on the reform of the Poor Law by old age pensions, and the important Commission on local taxation which recently completed its lengthy labours are examples. The whole series of documents and reports issued by Royal Commissions comprises an inexhaustible supply of material for the legislator, the administrator, and the student of English government in all its branches. Thus the lesson so earnestly taught by Bentham and Mill—that knowledge of the conditions of government should be centralised—has been learned and translated into practice without resort to any cut-and-dried scheme. And the reports of these Commissions are not only records of grievance and deficiencies, but expressions of the far-reaching reformation which, in the course of the nineteenth century, has come over the method and spirit, the organisation and objects, of internal administration, and prove, if proof were necessary, that the aim of reform has been to adapt the forms and functions of every organ of the State to the endless complications and countless demands of modern society,—at the same time preserving in undiminished force that grand principle of representative democracy—the supremacy of Parliament over the whole province of public administration.

PART VII

THE POSITION OF PARLIAMENT AND THE COURTS OF LAW IN THE SYSTEM OF LOCAL GOVERNMENT

I

EVERY constitutional government in working out a system of local administration has to solve in its own way the problem of central control. Broadly speaking, three methods are available, and may be employed either severally or in combination: (1) The local authorities may be subjected to the orders of a central department. This is administrative centralisation in the fullest sense. (2) They may be subjected to the legal control of courts of law, whose decisions will be concerned merely with the question as to whether or not any particular act of administration is lawful. (3) They may be subjected to political control—a term which signifies the supervision exercised by a representative central organ, expressing the will of the supreme authority in the State.

The question now to be investigated is how and to what extent these three methods have been pursued in the English solution of the problem. Above all, we must ascertain precisely what is the nature, the structure, and the actual working of the central organ which embodies the supreme will of the English State in relation to internal government. It has already been made clear in the preceding part that those departments of the central government which have to do with home affairs are not possessed of sovereign control over a

decentralised system of local government. If English local authorities can be called subordinate in any true sense, they are subordinated only to Parliament. It is far more correct, as we have again and again shown, to say that the English system of local government has its centre of gravity in Parliament than to find that centre in the Local Government Board.

Many side lights upon the relationship between Parliament and local government have appeared in earlier chapters. Attention is now to be concentrated on the position of Parliament as supreme administrative authority—a position which it still holds in law and in fact, despite the creation in modern times of administrative departments with supervisory powers.

“Alle staatliche Verwaltung ist regelmässiges staatliches Handeln.”¹ There is indeed, as this saying implies, a touch of the concrete and of the actual in the business of public administration which does not appear in any other function of the modern State. The reason of this is the prominence of a personal factor; for every act of administration appears as the act of a person endowed with public authority. In primitive administrations the personal factor was felt throughout government. The King was the sole organ of public authority, and it is very instructive to observe that in the Germanic States the interpretation of the law, *Rechtsprechung*, with the adjudication of wrongs to property and torts, remained in the hands of the people long after the execution of judgments and sentences (the administration of justice) had passed over to the King and his servants.²

In all the States of continental Europe internal administration has developed as a separate function of public authority. On the one hand, it subdivided itself, as the needs of society grew more complex; on the other hand, and at the same time, in this very process of differentiation and extension, it gained concentration and unity, while it strengthened the authority of the ruler of the land and his advisers, who, by this enlargement and refinement of administration,

The development of administrative law on the Continent.

¹ So Laband in *Das Staatsrecht des Deutschen Reiches*, 3rd ed., i. p. 645.

² The invasion of the Old Germanic constitution by kingly powers of administration is reflected in the development of the Frankish office of Count (cf. Sohm, *Deutsche Reichs- und Gerichtsverfassung*, p. 35).

tightened their hold over all ranks of society. Then, by degrees, as the written and unwritten laws of each nation were formed more or less under foreign influences into a great and independent system, there grew up by its side a complexity of rules to regulate and regularise the execution of public authority. In short, the old distinction between a judgment and its execution was preserved, and out of this distinction were developed two systems—one the rule of law proper, the other the rule of administration or administrative law. This administrative law, as it is called, originates in the sovereign's unlimited power of issuing ordinances. It is put into force by an army of officials and councillors subordinated to the command of the sovereign. Administrative law is distinguished in many important respects from the ordinary law of the land. An ordinary law can only be altered if and when certain conditions more or less independent of the will of the sovereign are fulfilled. But, as administration is held to be the peculiar domain of the sovereign, so administrative law is held to be his law, and the administrative orders issued by him are held to be equivalent to the laws of the land. In the course of centuries the empire of criminal and private law shrank before the inroads of public authority, which invaded with ceaseless and ever-growing activity province after province of civic life, until at last there was established throughout the continent of Europe the doctrine that all public authority, including legislation, is vested in the sovereign. *Jus publicum*—administrative law—now predominated over private law, the latter being at the mercy of the sovereign, to whom, as the personification of government, it owed its operative force. Thus arose the absolutist State of the eighteenth century, based on the doctrine of an omnipotent monarch, which limited and reduced to a minimum the conception of independent law.¹

¹ An alteration of the law of the land seems, however, in German territories to have long involved the agreement of the Estates (cf. Schröder, *Deutsche Rechtsgeschichte*, pp. 6, 33 *sqq.*). The oldest administrative laws of Germany in the modern sense are the territorial police ordinances of the fifteenth and sixteenth centuries. These were indeed discussed by the Estates and framed with their assistance; but, at the same time, first in Austria, afterwards throughout the German Empire, administration was reorganised under an absolute monarch. And this organisation became the weapon of that monarchical supremacy

The limits of our task forbid us to describe these developments in detail, or to inquire how far, in the course of the nineteenth century, continental States have been restoring the rule of law over administration. This continental history is important here only because it forms so complete an antithesis to the development of the law and constitution of England, and because through this antithesis the true meaning and effect of the English constitution are best shown. In England, as on the Continent, the King—after the ripening of the Anglo-Norman State—was acknowledged as the embodiment of authority. He had judicial powers concurrent with, and superior to, those of the people's courts. He sent officers from his palace to execute justice in all parts of the land. He was the chief of such public administration as then existed. But the growth of this kingly power and the development of an administrative law as the peculiar province of the Crown were arrested,—so deeply rooted were the principles of the common law, and so strong was the national feeling that no rule of common law might be altered without the consent of the people. Accordingly, the exercise of public authority, instead of controlling, was controlled by, the laws of the land. The term "common law" comprised originally all the customary rules, whether of Saxon or Danish origin, which, at first local, gradually obtained

Rule of one
law in
England.

(*Obrigkeith*) by which the whole public authority was soon to be concentrated in the hands of the sovereign. At the same time the influence of the Estates upon legislation and government steadily diminished, until, in the second half of the seventeenth century, the Police-State of the Continent with its absolute sovereign had matured and become complete. The origin and formation of monarchical central government in the sixteenth century was also intimately connected with the organisation of justice; for this reason, that, from the standpoint of an omnipotent prince, every question in which his majesty and supremacy (*Obrigkeith*) were involved, was claimed, and successfully claimed, as a question of administrative law to be decided by the new authorities—the servants of the monarch. In this way, for the first time, *Privatrecht* and *Öffentliches Recht* were sharply distinguished. The first term was now understood to include the whole of those laws and institutions which did not touch the interest or affect the execution of the supreme authority. At the same time, by the side of the old courts of justice which decided private rights and exercised ordinary criminal justice, there was created a special jurisdiction for the decision of administrative law; and this function was assigned to the officers of the central administrative authority (cf. for this development the excellent description of Tezner, *Die landesfürstliche Verwaltungsrechtspflege in Oesterreich*, 1898; especially p. 62 sqq.).

general recognition, and brought all Englishmen into relation with one another. The Norman Conquest threw into sharp relief the difference between English and foreign views of law, and strengthened the national feeling against any encroachment on customary rights.¹ In the wars waged by the barons and the people with the King the *lex terrae*, or the old law of the land, was triumphantly vindicated as against the absolute dominion of the King. William the Conqueror himself expressly confirmed the laws of Edward the Confessor, thereby recognising and adopting the main body of Anglo-Saxon law; although it is true that, in introducing the feudal system, he was engrafting a new and foreign plant upon the English stem. The laws of the Confessor were again confirmed by Henry I. Common law therefore remained the kernel of the national constitution. Its peculiar forms and characteristics were kept alive by judicial decisions, and gradually absorbed or prevailed over foreign influences. Like all uncodified laws, resting upon an ancient *Volksrecht*, the common law sought to give precise expression to all the traditional rules, maxims, presumptions, or proverbial sayings which regulated the relations of individuals both to one another and to the public authority. Recognised then, however reluctantly, by the Norman conqueror and his successors, the common law operated to limit kingly power; for the King was thus bound from the first by the existing laws of the land. A further and still more important consequence ensued. The fundamental conception

¹ "Within England itself, though for a while there was fighting enough between the various Germanic folks, the tribal differences were not so deep as to prevent the formation of a common language and a common law. Even the strong Scandinavian strain seems to have rapidly blended with the Anglian. It amplified the language and the law, but did not permanently divide the country. If, for example, we can to-day distinguish between *law* and *right*, we are debtors to the Danes; but very soon *law* is not distinctive of Eastern or *right* of Western England. In the first half of the twelfth century a would-be expounder of the law of England had still to say that the country was divided between the Wessex law, the Mercian law, and the Danes' law, but he had also to point out that the law of the King's court stood apart from and above all partial systems. The local customs were those of shires and hundreds, and shaded off into each other. We may speak of more Danish and less Danish counties; it was a matter of degree; for rivers were narrow and hills were low. England was meant by nature to be the land of one law" (Professor Maitland's article on "English Law," in the *Encyclopædia Britannica*, vol. xxviii. p. 247 (1902).

of the unity of all law, which had always been associated with the rule of common law, was preserved as a precious heritage for the future, and proved again and again an insurmountable obstacle to schemers against constitutional liberty.¹

Even in the actual work of administration the King and his servants could not run counter to the law. The King's courts were indeed superior to the older local courts; but the judges had to interpret, not to alter the law; they were bound by precedent, however anxious they might be for royal favour, and they were competent to decide contentious questions even where the functions and limitations of government were at issue. The one exception to this principle was the case where the King chose to exercise his prerogative—that is to say, the special and personal privileges attaching to him in the execution of public authority. For centuries the royal prerogative, with its vague and undefined powers, formed the rallying ground for all attempts to shake the supremacy of the "rule of law." The enemies of the constitution could always insist that the King was entitled to make and unmake law in virtue of his prerogative. And indeed for two centuries after the Conquest he frequently did. Yet even then it was held, in accordance with ancient custom, that the King ought not to alter the laws of the land without taking the advice of his Great Council. The Magna Charta itself, as Hearn rightly observes, was not an innovation but a solemn declaration of common law and of constitutional usage. Already Bracton, one of the oldest writers on English jurisprudence, gave full and clear expression to the limitation imposed upon the legislative power of the King. In England,

The royal prerogative.

¹ The precipitation of English law in a coherent form by Glanvill (1188) is connected by Professor Maitland with the revival of Roman jurisprudence in Italy. Nor did the equitable jurisdiction of the Chancellor, which developed after the middle of the fourteenth century, clash with this idea of unity. After a short period of rivalry with the courts of common law, equity came to be regarded merely as a supplement to the common law, based like it upon previous cases and upon fixed principles free from the influence of the Crown; and in this way equity grew and progressed as a part of a consistent whole distinct from, yet not inconsistent with, the common law. The equality of the two, in practice of long standing, was formally sanctioned in 1873, when a concurrent administration of law and equity was introduced by the Judicature Act of that year (36 and 37 Vict. c. 66, sec. 3), which established a Supreme Court, with two branches or divisions—common law and chancery (cf. Hearn, *op. cit.* p. 303 *sqq.*; Maitland, *Justice and Police*, pp. 30-42).

he said, the maxim of Roman Law, "Principis voluntas habet legis vigorem," does not hold good; or rather it only holds good in a modified form. That is to say, a rash presumption of the King's will is not law. Law is only made when there is the intention to make it, and is "that which has been rightly defined with the counsel of his magistrates, the King himself authorising it, and deliberation and discussion having been had upon it." A king "can do nothing on the earth except that which he may do of right." Or, as a later maxim has it: "Voluntas regis in curia lucet non in camera."¹ These then are the two indestructible principles of English constitutional life: the maintenance of a single system of justice based upon the common law, and its supremacy over government. From

¹ Bracton, who died 1238 A.D., was one of Henry III.'s justices (cf. Hearn, *Government of England*, pp. 4 *sqq.*, 19; Maitland and Pollock, *History of English Law*, i. pp. 182, 511-526). The above quotation will be found in Twiss's edition of Bracton, *De Legibus Angliæ*, vol. ii. p. 173 (lib. iii. c. ix.). A peculiar law of public administration appears in the oldest form of German State, the Frankish Monarchy, and finds expression in the dualism of the law of the kingly office (capitulary) and of the people's law (lex). How far the influence of the later Roman Empire and its system of administration was here felt cannot now be followed out (cf. Brunner, *Deutsche Rechtsgeschichte*, vol. ii. secs. 59 and 60). But without doubt the dualism of the *Jus Publicum* and *Jus Privatum* (a division of law into two completely different categories), which has marked for centuries the constitutional life of the States of Central Europe, was the fateful consequence of the "Reception" of Roman law. The conception of state and law, which expresses itself in the Roman Imperial constitution and entrusts the regulation of law and government to the free discretion of the monarch, has borne fruit in many German territories, and is responsible for that *hoheitliche Charakter* of government which allows the sovereign alone to decide the extent to which law shall affect administration. In England, on the other hand, the feudal nobles united with the people in successful opposition to all proposals for the introduction of Roman law. It was only by the roundabout route of the Canon Law, with which the equitable jurisdiction of the Chancellor was at first associated, that certain institutions and conceptions of the *Jus Civile* were introduced into the system of English law. But their number, as Professor Maitland has observed, and their importance have been much exaggerated. That great world of legal conceptions dominated by the idea of an emperor superior to all law, like the idea of the temporal supremacy of the Pope, was always violently resisted, and never took root in England. In his *History of English Law* (vol. i. p. xxxiv.) Maitland admirably shows that one of the principal problems to be solved by the English historian is, how the sudden flood of Roman law in the twelfth and thirteenth centuries ebbed away so completely and left so few traces. At the very moment when the renaissance of Roman law was at its height, England saw the consolidation and organisation of its native laws under Edward I. (cf. Goldwin Smith, *United Kingdom*, i. p. 181 *sqq.*).

these two stems branches have shot out in all directions, and the English system of administration has grown and spread on quite peculiar lines. True, as was shown in the historical past, the two main principles of the English system did not for a long time come into full play. It required the political labours of many generations and the great upheaval of Puritanism before all their consequences were made manifest. On the other hand, it is equally certain that England never lost her conviction that common law is the basis of the constitution. Neither the nation, nor the judges, nor the lawyers have ever accepted, or even understood, the Code of Justinian with its logical distinction between public and private law; and for that reason there has never grown on English ground the idea that government is the special domain of the sovereign's pleasure, and that questions of administration or of disputes between the State and the citizen should be governed by different principles from those which are applied to "private" disputes between one citizen and another. Rather, with every advance of civilisation, and with every increase in the activities of the State, the internal administration of England has been built up as part of an entire whole—of an undivided and indivisible system of national law. Public authority, in all its functions, has remained subordinated and linked to law. The rule of governmental activity was, and has always remained, a principle of the common law; the executive authorities have always acted, not only as the creatures of the Crown, but also as the representatives of the local communities in their old historical divisions, in which alone from time immemorial the citizens had acted together and felt themselves to be members of a national State, to which also the King himself belonged, with whose laws even he must comply, though he held for many centuries a position of extraordinary power and elevation.

This conception of the unity and sovereignty of law finds its clearest and completest expression in the history and proceedings of the English Parliament. The significance of the English Parliament from this point of view may be best indicated by saying that, in the course of four hundred years, it created a peculiar organisation which had for its purpose to subordinate the government,—that is to say, the whole internal

The rule of law
expressed in the
rule of
Parliament

government of the State, including the central powers of the King in that relation,—permanently and completely to an objective and inflexible law. As Dicey truly observes, the recognition of the sovereignty of Parliament is, from a legal point of view, the “dominant characteristic” of the English constitution. This sovereignty finds its legal expression chiefly in the unlimited legislative authority of Parliament, which shows itself in two ways: first, in relation to the objects of legislation; second, subjectively, because England knows no other parallel authority competent to make laws.¹ This legal sovereignty is, in the language of jurisprudence, merely a particular expression of the principle that the law should be indivisible and supreme. Once the King in Parliament had become the sole legislative organ, the sovereignty of Parliament was henceforth implied by virtue of this very conception of a supreme and indivisible law. Moreover, at the same time, the relation of Parliament to the administration became clear; for while administration, being the business of the State, is an exercise of public authority, that authority, as before remarked, was itself subject to the rule of law. Consequently the King in Parliament, being the one and only legislature, must necessarily exercise supreme authority over internal administration. In other words, since Parliament first began to exercise its regular functions, administration in England

over general
administration

found its full expression in legislation, apart from abnormal uses of the King's prerogative. Acts of Parliament became the ordinary form in which were framed not only all new laws in the continental sense of the word, but also all those rules of administration which regulate the constructive and preventive activity of the State in relation to the common life of its subjects. Almost at the same time there was created, as we have seen, in the office of the Justice of the Peace a judicial organ for the purposes of carrying out locally the work of internal administration; and thus, not only were the rules of administration themselves either rules of common law, or statutory laws passed by Parliament: they were also, like other laws, carried into execution by a judicial authority. Thus the uniformity and the equality as well as the supremacy of law were illustrated in the

¹ Cf. Dicey, *The Law of the Constitution*, p. 37 sqq.

administration of the country by Parliament and by the Justices of the Peace.

But there is much still wanting in our account of the relationship between Parliament and the administration. So far our eyes have been fixed upon that kind of administration which, by its very nature, admits of being regulated by general rules, enforced throughout the kingdom. These general rules of administration are laws in the ordinary sense. But with the growth of the modern State, another and an equally important sort of public administration has arisen to deal with the peculiar needs of localities. On the Continent this sort of administration—local administration properly so called—first found expression in the powers assigned to certain public authorities, such as the landed estates in each province of the State, and the municipal or rural communities, to regulate for themselves certain specified departments of administration. So there sprang into activity many independent authorities in the towns and provinces of Germany and France—only, however, to be more or less completely deprived of their rights by the absolute and centralised “Police States” of the seventeenth and eighteenth centuries. In England, however, the idea of a unified and sovereign law made it inevitable that the central authority,—that is to say, the King in Parliament,—should be the sole source, not only of the general rules of administration, but also of these particular, local, and individual rules. In this direction the strong system of centralisation which was set up by the Plantagenets unquestionably tended; and the rise of Parliamentary institutions strengthened instead of weakening that tendency; for it removed the worst feature of centralisation by transferring the central power from an absolute monarch, who knew nothing of local requirements, to a Parliament composed of local representatives. Thus the King in Council was displaced by the King in Parliament, and Parliament became the high court of administration, exercising its authority by issuing administrative regulations of a general or of a local character in the form of general and local statutes. In this way a formal Act of Parliament came to be the constitutional means of translating the will of the State into action; and the same solemnities

and over local
government.

which attended the organisation of national government were also required to create local machinery for the satisfaction of local needs. Local government in the narrow sense was built up by a central Parliament, but it was by a Parliament itself composed of the representatives of local communities. Local legislation was centralised in what was after all only the crown or summit of local institutions. After a time, Parliament became conscious that two different things were being done under the same form, and accordingly a distinction arose between general and special legislation—between public and private, or local, statutes. It is true that under the first many acts of administration took statutory form, especially Finance Acts conferring power to borrow or spend money; but the second class of local and private statutes was almost entirely administrative in character as well as being invariably restricted in its geographical operation.

It cannot too constantly be borne in mind that the kingdom of England, in spite—or rather, in consequence—of its unbroken constitutional history has always enjoyed a centralised government. At a time when Germany and France were split up by feudalism, Anglo-Norman England was a unique example of political unity. Its towns were never formed into republics, nor its counties into feudal principalities. England has always been governed from the centre—first by the Norman kings, then by Parliament. And necessarily so; for where a country is under the rule of one law, that law can only be made by a central authority. But, on the other hand, to the inward eye England never has been administered from the centre. Its internal government has always been a decentralised local government. The reason of this is, that since the Great Charter the English people have never been governed from above, but have always governed themselves after their own fashion, in accordance with social requirements and the distribution of social power. The carrying out of the law for national as well as for local purposes—in short, the whole work of internal administration—was entrusted to the local communities in their historical divisions, whose representatives, in combination with the King and the landed aristocracy, formed the legislature and the supreme administrative authority. Thus an intense centralisa-

tion of the national will was combined with complete decentralisation of the business of carrying it out.¹

For the better understanding of these results, which have been arrived at theoretically by deduction from the first principles of English laws and institutions, we must trace the main historical features of parliamentary and judicial development.² The English Parliament sprang from a fusion of two institutions—one the Great Council of nobles, the other special representative bodies originally intended only for purposes of taxation, and of a feudal character. The *Magnum Concilium* was an old institution deeply rooted in the common law, composed of temporal and spiritual lords owing their allegiance directly to the throne; it was an advisory body for the assistance of the King in the business of government, and more particularly in the personal work of giving judgments. In the primitive system of the first Norman kings, the giving of judgments,—that is to say, the settlement of disputes,—was a most important (perhaps the most important) function of the State. For there was then no such thing as legislation in the modern sense; common law regulated the relations of nobles, freemen, and serfs in the various orders of social and industrial life. It was then from this *Magnum Concilium*, by a process of which the outlines at any rate can still be clearly traced, coinciding as it did with the severance of the kingly from the judicial office, that the standing courts of common law gradually grew up. But the same *Magnum Concilium* was also the predecessor of the House of Lords; and it is from the *Magnum Concilium* that the House of Lords draws those judicial functions which it has enjoyed uncontested down to the present day. Besides the *Magnum Concilium*, the King was surrounded by another permanent and narrower circle of advisers and helpers in the work of

The rise of
Parliament
and the Courts.

¹ This characteristic feature of Parliament as a combination of the territorial divisions of the nation into one independent whole appears in the oldest records. In the writs of Henry III. and Edward I. the country is called *communitas regni*; in the oldest work on the law of Parliament, the *modus tenendi parliamentum*, Parliament is termed *communitas parliamenti*, cf. Hearn, *op. cit.* p. 499.

² On the rise of Parliament cf. Hearn, pp. 471-488, 509; and pp. 288-294 on the origin of the Common Law Courts; pp. 300-312 on the development of Assizes and Equity Jurisdiction; pp. 277-299 for the early history of the Privy Council.

government—the so-called Continual Council, better known by its later title, the Privy Council. From the very beginning there was discernible in the activity of this last body, in accordance with the two great divisions of the King's prerogatives, a judicial function as well as a legislative-administrative function. Of the latter function, which is embodied in the development of the Privy Council, enough has already been said in another context. As the judicial functions of the Privy Council developed, there were formed from its members the two great Crown offices—the Exchequer or financial department and the Chancery. These two offices were early formed into independent Courts of Justice. In the second Court the Chancellor gave civil redress to those who sought his aid, "for the love of God and in the way of charity." The Chancellor's redress was called The Chancellor's equity. equity and was given in accordance with equitable rules and procedure. The growth of equity may be best illustrated by the analogous development of Roman edict law with its interdicts and equitable remedies by the side of the old *Jus Civile* with its *legis actiones*. In England, as in imperial Rome, forms and processes had hardened prematurely, and the customary law of the nation, in spite of its native elasticity, no longer sufficed to satisfy the needs of a progressive society. Accordingly, the simple and often primitive rules of law and forms of action of the *Jus Civile* in Rome and of the common law in England were supplemented, but not supplanted. Just as the Roman prætor promised his aid to those who were debarred by personal disqualification, or by the character of their grievances, from the remedies of the *Jus Quiritium*, so in the reign of Edward I. the English Chancellor began to extend equitable aid to persons whose wrongs could not be righted under the common law. Thus the gaps and defects of the common law were filled up and mended by remedies in Chancery. The constitutional ground for this judicial activity of the Chancellor (the most learned in law of the King's Councillors) lay in the authority of the King his master; for the King was conceived to be the protector of the needy and the fountain of justice and mercy—a conception formulated by the Church, of which in early times the Chancellor was usually a dignitary. At

first the Courts of Common Law combated this concurrent jurisdiction of the Chancellor; and Parliament more than once petitioned Edward III. and his successors to abolish the jurisdiction of the Courts of Chancery and Exchequer. But ere long their usefulness and necessity had come to be recognised. Some excursions of the Chancellor were checked, and the competence of his courts was defined. Where the common law offered a remedy, equity must not intervene. But the value of equity had to be recognised. Henceforth it was a constituent and equal, though distinct part of English law. When appeals from judgments in equity were transferred from the Privy Council to the House of Lords, all conflict of common law and equity was ended, and the original theory that equity had come "not to destroy but to fulfil" was completely realised by the practical fusion of the two jurisdictions in 1873.¹

The form in which resort was made to the Chancellor was by petition directed to the King and his Council. After the reign of Edward I., when Parliament had established itself, and it was accepted as a constitutional principle that new law could only be made by the King with the approval of Parliament, these petitions for an equitable remedy began to be varied. Some were directed to the King and his Council, some to the Chancellor, some to the Lords, and finally they were often directed to the Commons and Parliament. Their subject-matter varied greatly. Of the petitions to Parliament Mr. Jenks observes: "If we glance at the roll of the English Parliament we shall find that the great bulk of the petitions which are presented during the first two hundred years of its existence are complaints of the breach of old customs or requests for the confirmation of new customs, which evil-disposed persons will not observe."² Aid was sought from a great variety of grievances. As may easily be imagined at a time when public institutions and public offices were clumsily organised and but roughly differentiated, there was no proper control or supervision by the State of its subordinate officials, nor were the duties and

Petitions
and Bills.

¹ See note, p. 327, and cf. Professor Maitland's article on English Law, *Encyclop. Brit.* vol. xxviii.

² *Law and Politics*, p. 63.

powers of those officials accurately defined. All appeals were directed to the King. But since the King in Council and the King in Parliament now embodied two clearly distinct groups of functions, and Parliament was coming more and more into the foreground, the numbers of petitions directed to Parliament increased enormously, and Parliament was soon obliged to create organs for the purpose of defining its jurisdiction. From the time of Edward I. the Commons regularly appointed a Committee of Grievances, while the Lords appointed Receivers and Triers of Petitions. Masters in Chancery were usually appointed to assist the Committee; but the Receivers and Triers were without exception members of the House of Lords. It was the duty of these bodies to examine the petitions as they came in, and to classify them according to their subject-matter. Those which touched the prerogative of the King had to be answered *coram rege* by the monarch and his Privy Council; others, which complained of a denial of justice at common law, fell to the Chancellor and formed the foundation of equity jurisdiction; others, again, were left to Parliament to deal with. The practice of the Triers gradually divided off those petitions which were decided upon by the Chancellor in accordance with his equitable rules (because these petitions had a purely judicial character) from those which seemed to be outside the province of judicial tribunals, or again, were so important as to require the consideration of Parliament.¹

Thus the principle came to be established that, in cases where good reason was shown by special petition for a new rule of law modifying the common law, or where a legal case seemed to have an important bearing upon national interests, resort should be had, not to the Chancellor or to the King in Council, but only to the King in Parliament. Accordingly Parliament was called upon in case of need to regulate not only questions affecting the interests of the whole community, but also matters of purely local and private interest which could not be settled satisfactorily under the old law. At first

¹ Cf. Clifford, *History of Private Bill Legislation*, vol. i. pp. 270-288. It may easily be understood that the Commons viewed the progress and expansion of equity jurisdiction with mistrust; and in the reign of Henry II. they protested very vigorously against it, though in vain.

these petitions were usually sent up from the Commons to the Lords, who had to decide and answer them in the name of the King; and here we have the beginnings of Private Bill legislation. Its further development may now be briefly summarised.* For long there was no sharp distinction between judge-made law and statute. The King made law on case or petition in Council or in Parliament. At first the Commons only advised; the Lords,—that is, the *Magnum Concilium Baronum*,—alone possessed judicial functions—functions still retained by them as Supreme Court of Appeal. For some time after it was firmly established that the King's proclamations and statutes, and all votes of public money, required the advice and consent of the Commons as well as of the Lords,¹ the latter still claimed the sole right to decide Private Petitions or Bills presented to the King in Parliament. But at last, in the time of Henry VI., when parliamentary legislation was fixed in its modern form, and all Bills required the consent of both Houses before they became law, it became necessary that the right of answering and deciding Private Petitions, or Private Bills, as they were called later on, should be shared by the Commons. This end was the more rapidly attained because the procedure by Bill had become the sole form of parliamentary activity; so that at one and the same time Parliament made itself the decisive factor throughout the whole field of legislation. From very early times, however, the majority of Private Petitions and Private Bills were only requests that acts of administration should or should not be approved; and so it had come to pass that the administrative requirements of the communal bodies which managed local affairs were formulated and satisfied in the same constitutional form as the general needs of the whole kingdom—that is to say, by an Act of Parliament. Thereby solemn and effectual expression was given to the principle that the King in Parliament is not only the sole legislator, but that he also wields most of the administrative power—at least in the province of internal administration; for henceforth local

The origin and growth of Private Bill legislation.

¹ With the decline of royal power under the Lancastrians laws were expressed to be made not only with the advice and consent, but by the authority of Parliament.

government could only be carried on by, and in virtue of, the special statutory provisions passed and approved by the King in Parliament. Parliament then had become the supreme Court of Administration, with control over all local authorities in so far as it chose to entrust them with the execution of general and local statutes; and in the exercise of these powers Parliament has ever since found one of its most important functions and English local government its main nerve.

In the history of the rise of Private Bill legislation we have found clear proof that the internal administration of England has been from the outset nothing but a carrying out of the laws, and that every act of administration, whether public or private, general or local, has always been in form and substance a law. Let us now pass from the history to the modern system of Private Bill legislation. The distinction between Public and Private Bills has been defined as follows:—

A Private Bill is a measure for the interest of some person, or class of persons, whether an individual, a corporation, or the inhabitants of a county, town, parish, or other locality, and originates on the petition of the person or persons interested.

A Public Bill is introduced as a measure of public policy in which the whole community is interested, and originates on the motion of some member of the House in which the Bill is introduced.

The object of a Private Bill is, in fact, to obtain a *privilegium*¹—that is to say, an exception from the general law, or a provision for something which cannot be obtained by means of the general law, whether that general law is contained in a statute or is common law.²

Although Private Bill legislation grew up entirely within the framework of Parliament and of parliamentary rules, there

are many peculiarities in the procedure relating to Private Bills, as will appear from a survey of the present arrangements for their discussion and approval. In the first place, the Standing Orders of both Houses provide that certain notices shall be given, and that the Bills shall be deposited before a certain date, in order that all persons may have notice if their private interests are affected. Private Bills are still introduced to Parliament by

¹ For the origin and early history of Private Bills, Sir C. P. Ilbert refers to the evidence given by Sir Francis Palgrave before the Select Committee on Public Petitions in 1832 (*H.C. Papers*, 1833, vol. xii. p. 171).

² Sir C. P. Ilbert, *Legislative Methods and Forms*, p. 28.

a petition, which is inserted in the preamble to the draft Bill. This form is a survival of the time when parliamentary action always resolved itself into petitions to the King. But in the course of centuries the practice of naming the sovereign was dropped, and the petitions are now addressed simply to Parliament. The proceedings on Private Bills in both Houses of Parliament resemble in general outline proceedings on Public Bills, requiring as they do three readings, a committee stage in both Houses, the consent of the King, and proclamation; but the resemblance is almost entirely external. There are two principal differences between Private and Public Bill procedure in Parliament. First, whereas a Committee of the whole House of Commons usually considers proposals for general legislation and finance, Private Bills are always considered by Select Committees. Second, in proceedings on Private Bills, the committee stage is almost invariably decisive. The different "readings" of Private Bills have been for a long time almost always formal, by the unwritten practice of Parliament—that is to say, for a long time it has not been usual for the House, as a whole, to discuss Private Bills unless they are to be thrown out altogether.¹ If, then, a Private Bill is challenged in the House, it is challenged not to obtain an amendment, but with a view to prevent it from passing. Constitutionally, however, every member of the Commons and Lords is still entitled, at a certain stage—that is to say, when the Private Bill is brought up nominally for discussion by the whole House (usually at the beginning of a sitting)—to speak and move a resolution; but for a century such occurrences have been very rare indeed. It is quite unusual for the decision of a Select Committee to be questioned and reviewed by either House. So that the administrative activity of Parliament, so far as it is embodied in Private Bill legislation, is practically in the hands of the Select Committees. This difference in procedure has been brought about first of all because Parliament as a whole could not possibly deal with the mass of Private Bill legislation which now calls for its attention. If the work were not

¹ Sometimes, however, after a Private Bill has been read a second time, an instruction to the Select Committee to which the Bill is referred is passed by the whole House. This has the effect of compelling the Select Committee to see that the Bill as it leaves them gives effect to the instruction.

delegated to committees but were imposed on Parliament itself, the proper political and legislative work of Parliament would be paralysed. Another reason for the adoption of this form of procedure is to be found in the subject-matter of Private Bills, which has usually no political colour, but requires for its understanding administrative knowledge, local information, and technical advice. Such a task is obviously quite unsuited to an assembly of several hundred members. Lastly, the work of Private Bill legislation is in reality largely judicial. Every citizen, it should be remembered, as well as every incorporated body, is theoretically free to petition Parliament; and since all Private Bills are introduced in the form of petitions, anybody with a *locus standi* may also, by petition, oppose any Private Bill laid before Parliament. The decision of Parliament on a Private Bill, therefore, may be, and often is, a judgment or award between two or more parties. To perform such a function a large political body, representing the nation as a whole, is plainly unsuited. It was necessary then to find a more convenient form under which the Legislature might exercise this peculiar function. The procedure of Private Bill legislation was designed for this purpose, and may therefore be described as the administrative procedure of Parliament.¹

The Private Bill legislation of Parliament necessarily

¹ Until the year 1815 neither the Commons nor the Lords had any fixed procedure for Private Bills. In that year the House of Commons established the Private Bill Office, a department to which all Private Bills, and communications relating to Private Bills, must be sent. From the Office the Bills went before Committees which decided in each case whether they should be laid before the House. But the Committee had to do only with the form, not with the merits, of the Bill. If the Bill complied in form with the regulations of the House, it came before the House to be examined on its merits by way of a proposal that it should be referred to a Select Committee. But it was not until the middle of the nineteenth century that the House passed a rule that these Committees should be of a non-party character. At the same time the procedure was shortened and expedited. Formerly both Houses of Parliament were accustomed to hear parties at the Bar of the House, usually before the Bill went into Committee, but sometimes on the second or third reading. This happened for the last time in 1824; since then the hearing of counsel and witnesses, and the examination of the Bill in detail, have been left to two Select Committees. Counsel and agents were also sometimes heard at the Bar of both Houses of Parliament in connection with Public Bills involving local and private interests, as in the case of the Municipal Corporations Act of 1835, but since the middle of the nineteenth century this practice also has been dropped (cf. Clifford, *op. cit.* vol. ii. pp. 816-860).

interferes with existing rights, and very frequently with existing law. Little wonder, then, that Parliament dare not delegate this function to any other body. The committees have to reject or assent to all manner of local Bills promoted by local authorities and private companies of all kinds for the purpose of getting powers which could not be exercised under a General Act of Parliament. This is what makes Private Bill legislation, with its constant adjustability to the concrete needs of local government, the constitutional pivot as well as the most characteristic feature of English internal administration. Before discussing more closely the substance of all this administrative work which Parliament promotes under the forms of legislation, another glance may be cast at the rules of procedure.¹ These are laid down in the Standing Orders of both Houses of Parliament, which contain all the regulations to be observed by any person, corporation, or local authority desiring to introduce a Private Bill, under pain of that Bill being thrown out on the very threshold of its career. To enter into the details of a procedure which it has taken several centuries to elaborate is impossible here. It will be enough to describe its principal features. The burden of Private Bill legislation is borne, as we have seen, by Select Committees of the two Houses. The House of Commons constitutes three large and carefully selected committees at the beginning of every session for the regulation of Private Bill business: (1) The Select Committee on Standing Orders, whose duty it is to advise whether Standing Orders may be dispensed with in cases where the examiner of petitions reports that the Standing Orders have not been complied with. (2) The Committee of Selection, which has to choose the committees for the consideration of Private Bills. (3) The General Committee on railways and canals, which has to consider all Bills dealing with railways and canals. First, then, it is necessary to constitute as many Private Bill Committees as the business of

¹ On the present procedure in connection with Private Bills, cf. Clifford's exhaustive description, *op. cit.* vol. ii. pp. 752-900. For a more recent work cf. Wheeler's *Practice of Private Bills*, London (1900); cf. also Franqueville, *Le Gouvernement et le Parlement Britanniques*, vol. iii. pp. 119-203. Further Standing Orders of the House of Commons, Part II.; and Standing Orders of the House of Lords, relating to the bringing in and proceedings on Private Bills. A new edition of each is printed every session in July or August.

the year requires.¹ A Private Bill Committee of the House of Commons generally consists of four members—two from each side of the House. The four are chosen by the Standing Committee of Selection, an important body, already referred to. One of the four is nominated chairman with a casting vote. Every member is required to make a declaration that he has no pecuniary interest in the subject-matter of any Bill upon which he sits. A Private Bill Committee of the Lords consists of five members.

The aid of a parliamentary agent² is required for the promotion of a Bill; he is responsible for conducting the Bill through its various stages, and briefs the Parliamentary Counsel who look after its conduct in committee. The first thing to be done by the promoters of a Private Bill is to prove that the Bill does not violate the Standing Orders. The Bill goes before an Examiner, who reports whether the Standing Orders have been complied with. Bills are classified as opposed or unopposed by the Committee of Selection according to whether a petition has or has not been deposited against it within ten days of the first reading of the Bill. At this stage a distinction is made between opposed and unopposed Bills. If a Bill is unopposed it goes to the Chairman of the Committee of Ways and Means, is introduced by two private members, and goes unopposed through the various stages of a Public Bill until in due course it becomes law. But an opposed Private Bill, after passing a formal First and Second Reading in either the House of Commons or the House of Lords, goes before a committee of four commoners or five lords. A Private Bill Committee of the Commons may not proceed if more than one of its members is absent, except by special leave of the House. In a Lords Committee three form a quorum. "Before this tribunal of four the applicants and the opponents are heard, witnesses are called, counsel are engaged, and the investigation proceeds with something

¹ This can be foreseen, as all Private Bills have to be deposited by December. Parliament usually meets in February.

² Still a perfectly open profession, and not confined to barristers and solicitors. Clifford describes the business of a parliamentary agent as "the work of soliciting Private Bills in Parliament." The profession requires much tact and an accurate knowledge of the practice of Parliament and of the rules of parliamentary drafting.

approaching the strictness of a court of law.”¹ As a rule a Bill goes separately before a committee of each House. It matters little whether it “originates” in the Lords or the Commons, and an opposition which has failed in one House may, and quite often, is successful in the other. For special reasons, however, the proceedings may be amalgamated, and a hearing before a joint-committee of the two Houses substituted for the ordinary system. In such cases—usually of Private Bills involving national interests—“the joint-committee is selected with extreme care, so that its decision, though practically final, is as authoritative as the repeated decision of the two committees.”²

In the case of an opposed Bill the real fight begins, so far as the House of Commons is concerned, before the Court of Referees,³ which consists of the Chairman of Ways and Means, and not less than three other persons appointed by the Speaker. The Referees may form more than one court, but a court cannot be formed of less than three. The business of the Court of Referees is to decide what parties may and what may not appear to support or oppose the Bill before the Committee. In technical language, they have to decide questions of *locus standi*. The general principle of *locus standi* is that petitioners against a Bill shall not be heard merely for the purpose of getting some advantage conferred on them by the Bill, but only for the purposes of preventing some injury which would be inflicted on them if the Bill were to pass.⁴ Only one counsel is allowed to address the Court on a petition against a Bill. After all the arguments

¹ *The Working Constitution of the United Kingdom*, by Leonard Courtney, London, 1901, p. 180. There are, as we have observed, exceptions to the formal character of the procedure in the House itself. Mr. Courtney says they are “as a rule” read a second time without opposition, adding, “Occasionally, however, the principle of a Bill is discussed by the House itself on the second reading, the discussion being justified on the ground either of the novelty or of the magnitude of the proposals contained in the Bill.”

² Courtney, *op. cit.* p. 181.

³ The Court of Referees was established in 1864. In the Lords each Select Committee decides questions of *locus standi* for itself when the Bill comes before it.

⁴ A test of injury is: Would the thing contemplated in the clause, if done without the protection of an Act, entitle the petitioner to compensation or to an injunction? A *locus standi*, however, may be justified on other grounds, e.g. proximity.

for the petitioners have been heard, counsel for the promoters of the Bill reply. There is no appeal against the decision of the Court; but the subject may be brought up in the House of Commons, and the Court may be instructed to rehear a petition for a *locus standi*.¹

When all questions of *locus standi* in connection with a Bill have been decided by the Court of Referees (or in the Lords by the Select Committee itself), the Bill is considered by the Committee; and here, again, as has been said, the proceedings resemble those of a court of law. Parties must appear by counsel. These must be barristers, and they are usually, but not necessarily, members of the Parliamentary Bar. Witnesses and experts may be called and examined on oath on behalf of the promoters and opponents. Maps and plans, which have been deposited, are usually hung along the walls of the committee room, and are constantly referred to. A Committee has all the rights and powers of an ordinary court of law as regards the calling of witnesses, the production of documents, and so on. The proceedings are public, but the Committee deliberates in private. The preamble is first considered, and upon this the main principle of the Bill is at issue. If the Committee decides that the preamble is not proved, the Bill is lost and does not come up for a Third Reading, for the House of Commons never reverses an unfavourable decision.² If, however, the Committee holds that the preamble is proved, the second step, called Procedure at the Bar, follows. The Bill is taken clause by clause, each clause, after the case for and against it has been heard, being either passed (with or without amendments) or rejected. The rules of evidence and proof are very lax, and the decision of Committees is guided not so much by legal cases as by the precedents of former Committees, which as a rule are cited orally. The members of Committees are usually business men without legal training.³ When the Bill has been passed by

¹ Cf. for examples Wheeler, *op. cit.* pp. 49, 50; and the Lockearhead Railway Case—*Times*, 22nd and 24th July 1897.

² The Bill might, however, be recommitted with or without a special instruction.

³ If a Member of Parliament is a practising barrister, he is exempted by parliamentary custom from the necessity of serving on the Committees. He is also, of course, prohibited from practice at the Parliamentary Bar.

the Committee of the House in which it originates, it goes before a Committee of the other House, which again has a perfectly free hand to amend or reject. If one committee, say of the Lords, makes amendments, the Bill is sent back to the other committee (of the Commons); and this goes on as in the case of Public Bills until a compromise is arrived at. If disagreement continues, the Bill drops. A Bill which has passed both Committees goes through the remaining stages of a Public Bill in both Houses and receives the royal assent, which, however, is worded differently. Instead of *Le Roi le veut*, the King's assent to a Private Bill is given in the words: *Soit fait comme il est desire*.

This system is very costly and rather clumsy, but it ensures a thorough examination of every Bill; and it is most important that public and private interests should be safeguarded. The line between Public and Private Bills has never been clearly drawn. If a Public Bill affects private interests "in such a manner that if it were a Private Bill, the Standing Orders would require notices to be given, it is called a Hybrid Bill; and the practice is to refer it to the examiners of Standing Orders like a Private Bill, and to make it proceed in nearly the same way as if it were a Private Bill."¹ Generally speaking, Bills restricted in their operation to particular localities are private. But this rule is not invariable. Thus, Sunday Closing Bills for Wales and Cornwall were held to have been rightly introduced as Public Bills. And London measures are more often Public than Private owing to the vast population and national importance of the Metropolis.² Some Private Bills, such as the Manchester Education Bill of 1859, the Liverpool Licensing Bill of 1865, and the Keble College Bill 1888, have been thrown out by a resolution of the House of Commons on the ground that they ought to have been introduced as public measures. So that the question as to whether a Bill shall be public or private depends upon the question of policy, as well as upon the question whether it is restricted in its application to

¹ Ilbert, *Legislative Methods and Forms*, p. 29.

² Yet two of the most important Metropolitan Acts,—Michael Angelo Taylor's Act (50 Geo. III. c. lxxv.) and the London Building Act 1894, 57 and 58 Vict. c. cxxiii.,—were both Private Acts (cf. Ilbert, *Legislative Methods and Forms*, p. 30).

persons or localities. The danger that privileges granted by Private Acts may be contrary to public policy¹ is probably now sufficiently guarded against.

The officers of the House and the different Government departments watch Private Bills from the point of view of the public interest, and call the attention of the Select Committee to matters affecting that interest. The House of Commons also appoints annually² a Special Committee on Police and Sanitary Regulation Bills, for the purpose of guarding against the insertion of enactments inconsistent with the general law.³

An excessive and over-zealous supervision of this kind might hamper those local experiments which have so often pointed the way for general legislation.

The chief objection to the present system of procedure in Private Bill legislation is of course its inordinate cost. This consideration alone overweighs the advantages of a separate and independent investigation of each Bill by two tribunals. That the dual system has lasted so long is not surprising when it is considered how many persons are interested in the fat and repeated fees of a protracted procedure. Of the expenditure by local authorities in promoting or opposing local Bills, the bulk is incurred by the councils of municipal boroughs which, in the seven years ending 1898, spent £434,000 in promoting, and £121,000 in opposing, Private Bills. The corresponding sums spent in the same period by the London County Council were £66,000 and £28,000, and by all other County Councils (which are allowed to oppose but not to promote) only about £63,000. Meanwhile, Urban District Councils spent £128,000 and £80,000. In addition, these three classes of local authorities—Borough, County, and Urban District Councils—spent £141,000 in promoting, and £33,000 in opposing, Provisional Orders.⁴

¹ It is a rule of law that when a private statute clashes with a public statute the private one prevails.

² But during the last two years this Committee has not been appointed (1902).

³ Ilbert, *op. cit.* p. 29.

⁴ See *Parl. Return* 344 of 6th August 1900 on Private Bill legislation expenses. On the costs of procedure before Parliamentary Committees, see Clifford, *op. cit.* vol. ii. pp. 716-751. For the existing scale of charges, see *Standing Orders of the House of Commons*, p. 111, and *Standing Orders of the House of Lords*, p. 81. An example may be given of the immense sums which are sometimes expended. The Derwent Valley Water Board (a large joint authority representing the towns of Derby, Nottingham, Leicester, and

We turn now to the contents or subject-matter of Private Bills. The oldest work done in Parliament in the province of Private Bill legislation consisted, as we have seen, largely of legal decisions arising out of a rivalry between Parliament and the Lord Chancellor. Almost all of them were, to use a much later term, personal and not local Acts, and many were criminal, like the so-called "Acts of Attainder." These were outlawries, or degradations of traitors and of other offenders against the State introduced by means of Bills to the judgment of Parliament. Bills of Attainder often involved confiscation of property as well as outlawry or death. There were also the corresponding "Bills of Pardon and Restitution."¹ A long series—136 in all—of these Private Acts of Restitution stretches from the reign of Henry VIII. to that of Victoria, and serves, as Clifford says, to remind us of many sombre passages in English history. In this class of personal Acts the judicial element, which runs through most of the older Private Bill legislation, is particularly prominent. They are now quite obsolete, though it would still be perfectly lawful to proceed against a person guilty of High Treason by a Bill of Attainder. But for long after the end of the thirteenth century, all

The subject-matter of local Acts.

Sheffield), according to figures published in the newspapers of September 1900, had paid in all for its new Water Act a sum amounting to about £110,000. Of this gigantic sum more than half (some sixty or seventy thousand pounds) went to reward the professional services of solicitors, barristers, and technical experts,—so at least the Chairman of the Leicester Water Works Committee announced in public. In the light of such figures, the sums paid to Parliament in the way of court fees shrink into insignificance. In the year 1882, 349 Private Bills yielded £49,795 to the House of Commons, and £40,873 to the House of Lords. It should not be forgotten that Private Bills, whether promoted by companies or public authorities, are generally concerned with important undertakings and large financial operations. Consequently, the legal and parliamentary costs only form a very small percentage of the total expenditure involved—a percentage less, in fact, than that which proceedings in the law courts bear to the sums at issue. From the parliamentary return (344 of 1900) referred to at the head of this note it would seem that some municipal councils have been rather lavish in incurring parliamentary expenditure. Thus, in the course of the seven years 1892-98, one borough alone promoted or opposed forty-six Bills. Another borough promoted or opposed forty-three Bills in five years at a cost of £20,000—a sum greater than the produce of a fivepenny rate. But these are, of course, exceptional cases.

¹ Acts reversing Attainders were passed in 1824 and 1826. Clifford, vol. i. p. 3 (note), cf. p. 355 sqq.

manner of changes in the status of the king's subjects—dissolution of marriage, legitimisation of children, naturalisation of foreigners, and so on—were frequently made by Private Act of Parliament. These functions also are now rapidly becoming obsolete. Private Acts were also concerned in early times with the law of property, to permit the sale of *fidei commissa* and of property in mortmain. By the side of these Private Acts of criminal and civil jurisdiction there was also in the same early times another kind of Private Act which was really an Act of government, and is to be regarded as the typically English form of central administration. The earliest instance appears to be an Act of the time of Edward I., regulating the jurisdiction of the Constable of Dover. Many local Acts were passed in the fourteenth and fifteenth centuries for improving roads, regulating fishery, and for the erection of dykes and sewers in different parts of the country. With the sixteenth century this branch of private legislation began to take its modern form of a parliamentary control over local government. The first Act for providing London with a supply of water was passed in 1543. In the next two hundred years hundreds of local Acts were passed to regulate the enclosure of common lands, to pave streets, to create harbours, build quays, and for many other public purposes. After the middle of the eighteenth century local Acts have made up the great bulk of Private Bill legislation. Canals first and railways afterwards gave rise to a great number of projects, which could only be carried out by the promotion of Bills in Parliament. In the latter case the unenlightened opposition of landlords and of other interests was so strong, and was carried to such lengths,¹ that new rules of procedure in Parliament were rapidly developed. The vast growth of transit under modern conditions, and the uprise of many large towns with new industrial needs and social demands, enlarged

¹ Cf. Cobden's "England, Ireland, and America," written in 1835 in Cobden's *Political Writings* (1868 edition), vol. i. pp. 118-121. In this (his first work) Cobden mentions that several railway schemes had been abandoned owing to the expensive opposition threatened in Parliament. "The London and Birmingham Company, after spending upwards of forty thousand pounds, . . . was unsuccessful in the House of Lords." He gives some interesting quotations from the questions asked and the evidence received by committees.

more and more the volume of Private Bill legislation. For a long time these Bills—at least so far as profitable undertakings were concerned—were private in the further sense that they were but rarely promoted by public bodies. Until quite late in the nineteenth century the Private Bills required for concessions of monopoly rights to supply gas-works, water undertakings, tramways,¹ as well for power to make railways, and the like, were generally promoted by private companies and not by representatives of the public. But even so, an increase in municipal activity was unavoidable. Tramways and other local monopolies were granted upon terms which usually involved a certain amount of control, and, gradually, in the case of certain undertakings,—more particularly water-works and gasworks,—where profit seemed to be less important to the community than quality, quantity, and cheapness, it became more and more common for the municipal council itself to promote (or to acquire) the undertaking. Meanwhile, as the burdens laid upon Parliament by the growing needs of industry and citizenship became heavier, the process of lightening those burdens had been begun by general Acts giving the powers most ordinarily required, and by such devices as the Clauses Acts.² But the development of this general legislation has been sketched in previous pages, and need not be repeated here. Suffice it that by a long process of evolution, which has only been surveyed briefly, local legislation came to be the form under which Parliament takes its direct share in the work of internal administration. To enter into the subject-matter of Private Bill legislation from a historical point of view would be to expound most of the different modes in which Parliament, during the last few hundred years, has conducted its home policy, and has sought to solve, with reference to local requirements, all the different administrative problems of organised life and industry. All

¹ The first local authority which got power to own and work its own tramways was the Corporation of Huddersfield, by the Huddersfield Improvement Act 1880, and the Huddersfield Corporation Act 1882.

² Cf. for a recent example the Electric Lighting (Clauses) Act 1899 (62 and 63 Vict. c. 19), which gives the model clauses for adoption in Electric Lighting Orders. For drafting Private Bills, the model Bills and Clauses prepared by the Chairman of Committees from time to time have to be consulted.

that can be attempted, here is to give a brief summary of the commonest objects of legislation.¹

By the rules of the House of Commons, Private Bills are divided into two classes, the first covering the older domain of local legislation in the strict sense, though in the second class there are now also to be found many undertakings which have been overtaken by the advancing tide of "municipal socialism." But formerly private persons and private companies alone would promote Bills for the purposes belonging to the second class. The first class relates to the following, among other subjects:—Burial-grounds; charters and corporations; the regulation and incorporation of companies; county rate; county halls and court-houses; the building and enlargement of churches and chapels; the paving, lighting, drainage, and cleansing of towns; inclosing and draining lands; poor rate and poor maintenance; gaols; Crown and Church property; ferries; fisheries; the erection of gasworks; letters-patent; police; the erection, improvement, and regulation of markets, and of poor law establishments; the creation of Stipendiary Magistracies and other paid (public) offices. Then there is the second class of Private Bills, relating mainly to the making, maintaining, extending, varying, or enlarging of public works, such as aqueducts, canals, ferries, embankments, bridges, navigation, water-works, tramways, railways, and so forth. The growth of municipal activity has not only invaded but greatly enlarged the province previously occupied by private enterprise, and has multiplied, to an extraordinary degree, the purposes for which Bills are, and may be, promoted by local authorities. Provisions for purchasing and laying out parks and pleasure grounds, for the municipalisation of various private works and institutions, for the enlargement of police powers, for the amalgamation or division of local areas, and, above all, for large financial transactions such as the creation and conversion of debts, and the purchase and sale of property;² or again large schemes for the

¹ On Bills of Attainder, of Pardon, and Restitution, etc., cf. Clifford, *op. cit.* vol. i. pp. 342-452; for the paragraphs which follow, see *Standing Orders of the House of Commons*, Part II. (i.) p. 33 (1900).

² In many local Acts power is taken to acquire land compulsorily; but Parliament does not allow any material departure to be made from the general provisions of the Lands Clauses Acts (cf. Ilbert, *Legislative Methods and Forms*, p. 317).

improvement of towns, the destruction of insanitary areas, and the erection of better dwellings for the poor,—all these are within the scope of local legislation. In England that enlargement in the powers and duties of government which is so characteristic a mark of modern society must needs express itself in the form of an enlargement of the competence of local authorities; and thus, by the instrument of local legislation, Parliament has become the supreme authority throughout the whole sphere of local government,—supreme because against its decisions, embodied as we have seen in general and local Acts, there is no appeal. The duty of the Courts is, not to review a statute but only to interpret it.

The work of the Select Committees of both Houses goes on for more than half of each year, and provides lucrative work for parliamentary solicitors and for members of the parliamentary Bar; and this committee work is the centre round which the English system of local government revolves. Parliament, and not a permanent department, is the creative force of English internal administration. On the Continent ministerial departments, with their local officers and subordinate provincial officers, are competent to make provisions and rules to satisfy the needs and regulate the conflicting interests of local communities, and for these purposes they have an absolute, or but slightly limited discretion. In England the element of administrative discretion, which must enter in some degree into every system, has been cut down to a minimum by the fusion of legislative and judicial and administrative functions in the Private Bill legislation of Parliament.

The direct control over local administration which Parliament exercises, by means partly of local and partly of general Acts, forms, as we have seen, one of the principal elements in the history of English law, and solves the problem of a sovereign control over local government in the one mode consonant with the spirit of the English constitution. It was all-important that the new central departments, made necessary by the new problems of local administration and by the newly constituted organs of local government, should be subsidiary and subordinate to Parliament. If the continental plan of independent govern-

Legislative
Control of Local
Government.

ment departments had been adopted, a fundamental principle of the English constitution would have been extinguished. Nay more—there would have been perpetrated a political absurdity; for at the same time that the Local Government Board and other departments of the central government were being erected and developed, the popular basis of Parliament and of the local administrative authority was being extended. So that the transition to a centralised system of administration, which, according to the report spread by continental critics, has taken place in England during the last seventy years is not only an effort, but a manifestly absurd effort, of the imagination. Such a constitutional monstrosity in a country justly famous for the continuous growth of its institutions would have been incomprehensible.

England, it is true, has its central authority with a decisive power to direct the movements of local government; but that authority is the High Court of Parliament itself, and not the ministry, which depends on Parliament, or the departments, which depend on ministers. The growth of Parliament, until it came to wield the sovereign power, is seen, however, not only in its legislative omnipotence; not only in the control it exercises over local administration in the form of local Acts; but also, thirdly and lastly, in the complete subordination of govern-

Parliament and
administration.

ment to Parliament. Up to the point at which this subordination was made complete, the Executive might still seem to be in some real sense the servants of the Crown; and the power of the Executive might still appear to be the sum of the powers of the royal prerogative, exercised by officers appointed by and responsible to the King. In relation to many of these officers the Crown might still seem to possess a legal superintendence over local government, for the appointment of the Justices of the Peace and Sheriffs as well as the granting of municipal charters all remained with the King. The sovereignty of Parliament, which means the subordination of government to the will of Parliament, has, as we know, found expression in the rise and perfection of the Cabinet, by means of which, without any formal change, the functions of the Crown were converted into functions of Parliament. In this way Parliament, already possessing, as we have seen, a direct

legislative control over local administration, obtained a second and more indirect form of control—the form known on the Continent as “political” control over administration. The expression is of necessity foreign and strange to English thought, for it sets out from an assumption which was never true in England—namely, that “administration” is a water-tight compartment of the State, disconnected from and superior to popular self-government, over whose representative institutions it exercises an administrative control. Such a conception has been shown to be impossible, for this “political control” is necessarily exercised in accordance with the political relations established between the central government and Parliament,—in accordance, that is to say, with the practice of Cabinet government. Now the Cabinet, it must never be forgotten, is a committee of Parliament appointed to carry on the whole work of government. In spite of the Privy Council, in spite of Orders in Council, of Royal Warrants and ceremonial observances, in spite of the Norman “*Le Roi le veut*,” Ministers are no longer advisers of the Crown but delegates of Parliament, whose authority only lasts so long as they retain the confidence or at least the support of a majority of the House of Commons.

English government to-day is carried on by a standing executive committee, responsible to Parliament for all that it says and does, and liable at any moment to be displaced if it offends the sovereign body. The Ministry indeed leads Parliament, but only so long and in such directions as Parliament is willing to be led. In most cases the relations of Parliament to Government are closely analogous to those which exist between a Borough Council and its Standing Committees; and in both cases the greater the confidence reposed the greater the practical powers of the Committee, and the greater the freedom with which those powers may be exercised. The history of the process by which the King’s Executive was converted into the Executive of a Ministry dependent on Parliament cannot be traced here. But from a theoretical point of view it may be summarised adequately as the history of the creation and acceptance of three principles or conventions. First, that a Cabinet is a unit; that Cabinet ministers stand or fall together. All are jointly responsible for every important act of Government—

The Cabinet
an executive
committee.

though a special responsibility attaches of course to the Minister within whose departmental province a particular act falls. The second convention is that the Cabinet must be composed of Members of Parliament. The third convention is that the Cabinet shall be made not by the King but by the Prime Minister. The King still sends for the Prime Minister, and that is almost the sole relic of monarchical power. The only real monarch known to parliamentary government is the Prime Minister, the maker and president of the Cabinet.

Long before the Revolution the English Parliament had become familiar with the Standing Committee as a means of enforcing a control over government and administration. Already in the sixteenth century committees of Parliament had begun to control branches of public administration; thus the Commons Journals speak of the formation of a Committee on Ecclesiastical Affairs in 1571, and in the later Parliaments of Queen Elizabeth a Standing Committee was regularly entrusted with inquiries into the validity of elections. With the accession of James I. Standing Committees multiply. There is, for example, the Committee of Privileges and Grievances, and the Committee of Courts of Justice, to inquire into judicial abuses. The Revolution ripened this system. After the outbreak of the Civil War the House of Commons carried on government by means of permanent committees and boards.¹

The development of the Cabinet from the secret Cabal of Charles II. is another illustration of the political genius which turned the devices of absolutism into tools of parliamentary government. Three generations were enough to make it impossible for a king to establish a system of government by heads of departments responsible to him and free from parliamentary control. And the same development which made the Cabinet a Committee of Parliament also put a stop to the system of Standing Committees, by which at one time the House of Commons thought to have governed the

¹ On the functions of Standing Committees in the English Parliaments of the seventeenth and eighteenth centuries, cf. Jameson, "The Origin of the Standing Committee System in American Legislative Bodies" (*Political Science Quarterly*, June 1894); Bryce's *American Commonwealth*, vol. i. pp. 150-160; cf. also for developments of the American system of Committees, Woodrow Wilson's *Congressional Government* (1901), and M'Conachie's *Congressional Committees* (1898).

country. In a formal sense the powers of the King's prerogative are still large, his patronage is great, the acts of his Privy Council are still important. But these powers are exercised and these acts are done by the Cabinet, the general executive committee of Parliament. Thus the so-called political control over administration is parliamentary and yet concentrated. There is unity and a unit; but the unit is a committee, not a Kaiser. A representative assembly is master, but it has one servant instead of many. The system of administrative control by Standing Committees of Legislatures and Congress, which the American colonies borrowed from the parliamentarism of the seventeenth century, is the typical form of central government in the American democracy, and is altogether different from Cabinet government.

The indirect "political control" exercised by the English Parliament over administration may now be described in a very few words. The mere fact that those who preside over the central departments of internal administration—the Home Office, the Local Government Board, the Board of Trade, and so on—are Members of Parliament, of the Ministry, and almost invariably of the Cabinet, indicates that they are responsible to Parliament for the acts done by their departments under their orders. The doctrine, so often taught by governments and their professors in the sham constitutional States of the Continent, that Parliament, as the legislative power, has no right to meddle with the domain of the Executive, rests on an unconscious, or crafty, misunderstanding of the English constitution, which is still feigned to represent a division and balance of powers. But in the debates and proceedings on the budget, and in numerous Questions and resolutions in Parliament. ways, as opportunities are afforded by the rules of parliamentary procedure, the House of Commons maintains constant criticism of departmental activity. And even when such criticism only takes the form of questions, and does not venture upon motions or resolutions, yet it has a strong and perceptible influence upon the conduct of administration by the government. In so far, then, as the central departments have been entrusted to a limited extent with an initiative and with discretionary power, their initiative and discretion have always been liable at any time to parliamentary criticism and revision.

The will of the majority of the House of Commons is the fixed point round which the administrative departments revolve, and by which they are regulated within the sphere of activity assigned to them by statute. Certainly it is true that the English Parliament never issues direct orders to the executive organs of Government, and only under very unusual circumstances passes instructions or resolutions interfering in the work of a central department, much less of a local authority; for it exerts, as we have said, scarcely any direct administrative control except by means of Public and Private Bill legislation. The cases in which Parliament intervenes by resolution in the work of government usually arise when one of the central departments exercises its discretion for an unpopular purpose or in an unconstitutional manner. The uncertain attitude of the Local Government Board towards promoters of local Bills, for example, was the subject of a resolution which led to the appointment of a Select Committee on Municipal Trading. Again, a resolution in the House of Commons in 1893 greatly assisted the demand for an eight hours' day in government factories and workshops. A case in which Parliament criticised the action of the Home Office in regard to the use of troops for police purposes has been referred to in another context.¹ The relations of the government departments to Parliament are not regulated by any fixed rule; they cannot be pressed into any unalterable mould; they answer to the unwritten habits and traditions of parliamentary government, and not to any express statutory provisions. It is the political nature of political institutions—and the lesson is best learned from England—which lends life and vigour to constitutional relations, and makes statutory provisions operative. Written constitutions, political maxims distilled into the paragraphs of a code, are only of practical value in so far as they set in motion, keep at work, and define the forces and ideas that underlie them.²

¹ See vol. i. p. 345; and cf. also previously, p. 72 of this volume.

² It was with the Long Parliament that the attempt to enforce direct parliamentary control over administration came to an end. But this control, as we have seen, was obtained by transferring the executive powers of the King to the Cabinet. In the time of William III. the right was already well established of both Houses of Parliament to investigate and criticise any act done by any officer or department of the State, and after such inquiry, to advise the Crown.

As the Ministry for the time being is only a Committee of a sovereign House of Commons, so the ministers and ministerial departments concerned with internal administration cannot follow their own impulses or conduct business as if they were bodies parallel to, and independent of, Parliament; they are, on the contrary, rather subsidiary aids to Parliament in the work of superintending government. They are merely intermediaries between Parliament and the Local Authorities, and cannot impose their own will upon the latter.

This intermediate position of the central departments is expressed in two institutions—Private Bill legislation and Provisional Orders. As

The subordination of departmental to parliamentary control.

Private Bill legislation is the normal and constitutional form of central administration, so Provisional Orders are a secondary form which has been called into existence along with the establishment of a new central control. In other words, just as the new central authorities were created in order to inspect and superintend with the necessary care the complicated details of a modern system of local government, and partly also to relieve Parliament of some of its growing burdens, not by independent action but rather by serving as the executive instrument of parliamentary policy, so Provisional Orders may fairly be described as the form which expresses the relationship between government departments and Parliament, and marks the position of Parliament as supreme court of administration. In the provisional character of these ordinances and in the securities taken against any conflict with the will of Parliament this subordination is clearly expressed; for every petition against a Provisional Order, if pressed, converts it straightway into a Private Bill, and brings to the surface the latent truth that departmental Orders are nothing more than substitutes (made necessary by the growing volume of Private Bill legislation) for Acts of Parliament—devices to relieve Parliament from a mass of technical and uncontroversial business without ousting it from its original supremacy and control over local government.¹

Such advice, if tendered by the Commons, was difficult and soon impossible to disregard, for it could be enforced by the refusal of Supplies (cf. Hearn, *Government of England*, pp. 136-156).

¹ Generally speaking, the Local Government Board, the Board of Trade, and other departments of central administration, endeavour to carry on their quasi-legislative functions in correspondence with the principles followed by the

Yet it would be quite erroneous to infer from this subsidiary and subordinate position of government departments, that their administration is constantly swayed and buffeted by the winds of parliamentary conflict and the breezes of party strife. To England, as the classical land of parliamentary government, party conflicts upon questions of internal administration have long been unknown, if we except the sharp animosities and deep-seated differences caused by the Home Rule struggle, and the reviving controversy over Elementary Education. Party conflicts over local Bills in the House are rare enough; party conflicts in a Select Committee itself are unknown. In the business of legislation by Private Bill and Provisional Order, Parliament is the sovereign power, and as its authority has been removed further and further from all possibility of rivalry, the feeling has grown stronger and stronger that Parliament as a whole is responsible to the nation for good government, and that the smooth working of administration should only be disturbed by party warfare when some serious question of policy is involved.¹ There is, however, a further reason why, in spite of the completeness of the political and legal subordination of the Executive to Parliament, the action of the central departments in regard to internal administration is seldom seriously interfered with; and this reason is that the parliamentary system of government has been developed to its logical consequences. For the Government, which we have been treating from one standpoint as fully subject to the

Select Committees, and above all, in harmony with the administrative rules prescribed by Parliament itself in the Standing Orders. The Standing Orders are not concerned only with details of form and procedure; they also settle many weighty questions of substance, and accordingly, without being actually on the Statute Book, constitute an important part of the English law of administration. There are, for example, to be found in the Standing Orders fixed rules governing the concession of natural monopolies to private companies and local authorities, and technical provisions with regard to the laying of tramways and railways, and the construction of canals. How completely the Board of Trade feels itself to be, even in pure matters of administration, merely a subsidiary organ of Parliament was well illustrated by the late Sir Courtenay Boyle, then Permanent Secretary of the Board of Trade, in his valuable evidence before the Select Committee on Municipal Trading (P.P. 305, 1900, pp. 1-20).

¹ "The Cockerton Judgment," a decision by an auditor of the Local Government Board, in 1901, is a good example of an administrative act involving political and parliamentary controversy; for, being upheld by the Courts, it seriously hampered the work of School Boards.

will of Parliament, is, from another point of view, a branch of Parliament,—nay more, it is the leading and guiding member of a great parliamentary body; and it is only by comprehending this double capacity of an English Ministry in its real context that we can possibly understand the kind of control which Parliament exercises over central administration, and can at the same time estimate and realise what is the effective influence exerted by the Cabinet, as the managing committee of Parliament, over the public service. Here, again, a knowledge of constitutional practice and an insight into the play of political forces are far more fruitful than any juristic analysis of a few statutory provisions. A strong Ministry will impress itself in a thousand ways upon internal administration; even in a weak Ministry a strong Home Secretary, or a strong President of the Local Government Board, will make his personality felt not only by means of legislative reform, but also administratively upon the actual conduct of affairs. The discretionary powers of central departments are indeed strictly limited, but it would be absurd to pretend that a change of a ministry or of a minister does not affect the temper of administration in home as well as in foreign affairs. The case of education or of poor relief might serve as an illustration. There is not, and there cannot be, any real antithesis between the central Executive and the Legislature; the structure of the English constitution excludes the possibility of such a conflict. The parliamentary position and character of a Ministry define the nature of its control over internal administration. By departmental control in England is meant, then, the control of departments subordinated to Ministers, who are themselves associated together as members of a Cabinet, which again is a committee of the House of Commons. Accordingly the superintendence of the Local Government Board and other departments is, from another point of view, an indirect form of the supreme control exercised by Parliament over administration.

II

The judicial control of local government is a third distinct type of supervision, long established in England and deeply rooted in the constitution. This again has been touched upon

previously in many places, and our purpose here is to collect what was before detached, and present a more complete picture of the relationship existing between local authorities and the courts of law. The history of the subordination of administrative to judicial authority has already been summarised. Let us remind ourselves of its main features only. The axiom

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of the identity and equality of all law, whether public or private, is rooted in the common law, and has lasted unshaken and unbroken down to the present day through a thousand years of national development. Upon that axiom the whole system of internal administration has been built up. From that axiom two consequences flow. First, every exercise of public authority must be lawful—that is to say, it must have definite legal sanction. Second, the sole judge of the lawfulness of an administrative act and the sole means of ascertaining it are the ordinary courts of law and the ordinary legal procedure.¹ In short, it is inconsistent with the fundamental principles of the English constitution and of English jurisprudence to distinguish administrative from ordinary law, or to entrust the decision of administrative difficulties to a special branch of the judicature. That this constitutional rule was first fully established and clearly recognised after the abolition of the Star Chamber, and after the extension of the competence of the Court of King's Bench to subjects previously within the jurisdiction of the Privy Council, has already been observed. On the other hand, there can be no doubt that the germs of the principle lay deep in the Common Law. From the time when Parliament first began to sit regularly it was recognised that, as only the King in Parliament might legislate or alter the law, so only the King in Court might judge, or interpret the law. Yet there was without doubt a conscious effort made under the Tudors and Stuarts to break up the constitutional unity of law, and to give the Crown the right of issuing administrative proclamations and ordinances independent of Parliament, and of introducing an administrative judicature independent of the ordinary Courts. This epoch of English constitutional history is remarkable for the very reason that its most prominent tendencies are un-English and

¹ Cf. Dicey, *Law of the Constitution*, pp. 174-192, 303-330.

sharply antithetical to those traditional ideas of law and government which finally triumphed at the Revolution. A recent publication has given us a very interesting picture of one of the most important branches of internal administration—poor relief;¹ and has afforded a glimpse into the new system of administrative courts which sprang up under Henry VIII., grew under Elizabeth and James, and ripened under Charles. The Privy Council, an association of the highest officers of the Crown, and, consequently, the organ of the King's prerogative and executive powers, had developed an extraordinary jurisdiction through one of its committees, the famous Star Chamber. The Star Chamber began by claiming the right to summon the judges of the land and call them to account in the name of the King. An Act of Henry VII. had enumerated a certain number of offences which the Star Chamber should have the right to hear and determine; and as time went on the jurisdiction of this new court extended to a multitude of other offences, and its members were entitled to inflict any punishment except that of death. Just as there had before developed from the King's Council an extraordinary civil jurisdiction in the form of the Chancellor's Equity, so in the jurisdiction of the Star Chamber a kind of "equitable" criminal jurisdiction, an *extraordinaria cognitio criminalis*, unfolded itself, and for some time worked smoothly enough by the side of the Courts of Common Law. But obviously the new "Chamber" was not so likely as the Court of Chancery to be quietly absorbed in the judicial

The Star
Chamber.

¹ Miss Leonard's *Early History of English Poor Relief* (Cambridge, 1900), especially pp. 47-60, 67-94, 132-183. From an elaborate investigation of state papers and other original authorities Miss Leonard concludes without hesitation that the Poor Law of Queen Elizabeth was successfully administered and carried out in the period 1597-1644, and carried out—it is interesting to observe—by means closely resembling in outward form those employed by the reformers in 1834, *i.e.* by a strongly centralised organisation of poor relief, culminating in the Privy Council. The similarity in the central control of the seventeenth and nineteenth centuries is not merely general: there is a remarkable resemblance even in details. Thus in 1630 there appeared a Book of Orders (a collection of Poor Law Orders) issued by the Privy Council—a replica of the modern Consolidated General Order. The truth is that a special Committee of the Privy Council was at that time prescribing the whole administration of the Elizabethan Poor Law down to the smallest details. The principal members of the Committee were Laud, Falkland, Wentworth, and other prominent persons who aided Charles I. in his struggle with Parliament.

system. An alteration in the Courts of Criminal Law may have serious political consequences, especially when political opinions may be treated as crimes. And the special jurisdiction of the Star Chamber soon led to severe constitutional struggles, although it removed many defects of administration and administrative law better than the Courts of Common Law could have done. These struggles were accelerated and embittered, rather than created, by the half-political, half-religious character imported into the work of the Star Chamber, when the Crown began to employ it more and more for the purpose of overawing Parliament. Thus the Star Chamber came to be regarded as the instrument of a catholicising court, and as an important link in the chain of measures by which the Stuarts sought to imprison the constitution. For, along with the development of this extraordinary criminal court, there was a well-laid and comprehensive plan for the creation of a central authority, which should have absolute power over local administration, and should put an end to the constitutional organs of government and to the legislative omnipotence of Parliament. The Privy Council, which through its Committee of the Star Chamber had made itself the supreme judge of administration under the form of a criminal jurisdiction freed from that of the Common Law, was already beginning to act as the supreme administrative authority. Under Henry VIII. Proclamations and Royal Warrants began to be issued direct to the Justices of the Peace, and thus these officers were brought into immediate subordination to the Crown. True it is, that most of the proclamations did not run counter to the laws, and were in the main intended to interpret and carry out parliamentary statutes. Yet none the less a fateful beginning was made, which eventually led to Charles I.'s unconstitutional government by Royal Ordinances without Parliament. It is highly interesting with the aid of Miss Leonard's careful monograph to trace the tendencies, already so strong in the reign of Elizabeth, which made towards a great political system of absolute government. It is noteworthy that while great English statesmen and savants of that time, like Wentworth and Bacon, were advocates and promoters of the new system, the boldest champions of parliamentary rights and of the integrity of the Common Law were

the typical representatives of a sturdy middle-class.¹ Bacon proposed that any question of law touching the interests of the Crown should not be allowed to go before the ordinary judges, basing his theory upon an old, and even then, a long obsolete writ, *de non procedendo rege inconsulto*. "The writ," wrote Bacon to the King, "is a mean provided by the ancient law of England to bring any case, that may concern your Majesty in profit or power, from the ordinary Benches to be tried and judged before the Chancellor of England, by the ordinary and legal part of this power. And your Majesty knoweth that your Chancellor is ever a principal counsellor and instrument of monarchy, of immediate dependence on the king; and therefore like to be a safe and tender guardian of the regal rights."

In these words Bacon was practically asking for the introduction of administrative law and administrative courts into England—in short, for a system of *droit administratif*, in which the Star Chamber and the Privy Council would have occupied the same position in England as the Conseil d'Etat and the Tribunaux Administratifs hold at the present time in France.² The aim, then, of the Tudors and early Stuarts was to obtain, through the Privy Council, a direct authority over administration, finance, and justice. The Elizabethan Poor Law, bound up as it was with the trade and labour policy of that time, formed an integral part of the general scheme, and served as a fixed point for the central action of the Privy

¹ At first indeed the principal opponents of the new administration were lawyers like Coke and Selden, but as the crisis approached, the leadership passed into the hands of small country squires like Hampden, Pym, and Oliver Cromwell. Of such stuff were the victorious heroes of the Puritan revolution and vindicators of the old-fashioned local self-government against the new administrative centralisation of the Stuarts. Perhaps the "State socialism" practised by Charles I. may help to account for the popularity of his dynasty among the poorer classes, so marked at the Restoration.

² Cf. Dicey, *Law of the Constitution*, p. 331, *sqq.* The writ referred to by Bacon was intended to attain the very same object as the famous 75th article of the French Constitution of 1799. "All servants of the State below the rank of a minister may only be taken before an ordinary Court of Law to answer for an official act by a decree of the Conseil d'Etat." This article, it is true, after appearing in all the previous constitutions of the nineteenth century, was expressly repealed by the Provisional Government of 1870, yet its principle has been preserved, and it has remained in practical force down to the present day, thanks to the jurisdiction of the Tribunaux Administratifs and of the Tribunal des Conflits. Cf. Lebon, *Das Staatsrecht der Französischen Republic*, 1886, p. 22.

Council upon administration. Its work after 1601 may be described as a combination of Cæsarism and socialism. For some time its administrative activity went on growing, until, under Charles I., it was strenuously endeavouring, with a considerable degree of success, to set and keep at work every unemployed able-bodied man in the country—in the language of modern socialism, to secure for every individual the right to work, and by necessary implication the right to live. Documentary proofs of its remarkable energy⁴ are afforded by the successive orders which the Privy Council issued to the Justices of the Peace, and by the submissive answers returned by them in their dutiful reports to the King's Council. By such means did Charles I. seek in his conflicts with Parliament and the middle classes (the small squires and tradesmen) to attract and attach to his government the sympathy and loyalty of the masses. The Orders of his Privy Council constitute quite an extensive system of socialistic measures,—the regulation of wages and of the price of corn, the employment of labour by public authority, the care of the infirm poor: all these are examples of a paternal system of central control over local government devised to secure the permanent triumph of absolutism. The fall of the Stuarts and the collapse of this whole system proved the incompatibility of their policy with the spirit and traditions of the nation; and when monarchy was restored there was no renewal of the attempt to create a *droit administratif* in England. Thus the Great Rebellion, the Restoration, and, lastly, the reconstruction of constitutional government and local administration in the nineteenth century, have shown by unmistakable and visible signs that the internal administration of England must be completely subordinated to the ordinary courts of the land.

In earlier pages of this work it has been explained how the new central departments, created in the nineteenth century, have been fitted into parliamentary government and brought under the sovereignty of Parliament.

The modern law of administration. The task of the Legislature has been to extend and intensify the work of internal government without reviving the ghost of the Star Chamber, to preserve the rule of law without stinting or starving administration. This great task has been successfully accomplished. In spite

of a vast expansion of governmental activity, England at the beginning of the twentieth century has no administrative law and no administrative courts in the continental sense. Every act of public authority, no matter by whom, or against whom it is directed, is liable to be called in question before an ordinary tribunal, and there is no other means by which its legality can be questioned or established. And if the decision is unfavourable to the act in question, the proceeding complained of is immediately invalidated and nullified. There is no exception in England to the rule that every public proceeding, be it the issue of a warrant to arrest or a demand for rates, or a summons to pay money due to a public authority, or an order of Justices, is just as much a matter of ordinary law, and is liable to be questioned in the same way, as a private suit or action brought by one individual against another. In either case the question as to what is lawful has to be decided by the ordinary courts—subject, where the issue involved is serious, to an appeal to some higher tribunal. Such expressions as *droit administratif* or *Verwaltungsrecht* cannot be translated into English, because the things described have no English correlative. The same High Courts of Justice, the Court of Appeal, and in the last resort the House of Lords, are alone competent to decide all disputed points of law, whatever the status of the parties, and whether, as a German jurist would say, public or private rights are in question.¹

The constitutional and traditional forms usual for proceeding against Justices and other public authorities and for

¹ Some trifling relics of a *droit administratif* are still to be found, as in the Petition of Right (the form of civil proceedings against the Crown) and in a few restrictions upon actions against constables and public authorities. More modern tendencies towards a continental system of administration appear in certain powers granted to the Local Government Board and described in a previous chapter, of adjudicating and finally deciding certain disputes arising out of modern laws of administration. After all that has been said in Part VI. on the "quasi-judicial functions" of the Local Government Board, it is enough here to repeat that they do not really encroach upon the unity and sovereignty of the law. Nevertheless they have been sufficient to cause uneasiness to English jurists and statesmen, who have bestirred themselves to throw obstacles in the way of an extension of these functions. Thus by sec. 8 of the Private Streets Works Act 1892 (55 and 56 Vict. c. 57) a court of summary jurisdiction was substituted for the Local Government Board, which had previously been the authority for deciding objections to new works on the ground that they were insufficient, unreasonable, or that their cost was excessive.

calling their acts and decisions in question are the old prerogative writs, devised by the Court of King's Bench, to meet the case of suitors who complained that they had suffered wrongs for which no remedy existed. Of these writs the most important are *Mandamus*, *Certiorari*, and *Prohibition*; to which should be added the famous writ of *Habeas Corpus*, whose origin is lost in antiquity. The writ of *Mandamus* is, in the language of Blackstone,¹ "a command, issuing in the King's name, from the Court of King's Bench, and directed to any person, corporation, or inferior court of judicature within the King's dominions, requiring them to do some particular thing therein specified, which appertains to their office and duty." It is a high prerogative writ expressing the right of the Supreme Court to superintend inferior tribunals and authorities, and to compel the exercise of those judicial or ministerial powers with which they are invested. By means of this writ the judges of the King's Bench Division are able at their discretion, though not arbitrarily, to exercise a far-reaching control over the whole internal administration, wherever an authority has exceeded its power or neglected its duties. It may be well here to state the seven rules which are believed to guide the discretion of the court in determining whether it shall or shall not grant a *Mandamus*.

The prerogative
writs—
Mandamus.

1. A *Mandamus* will only be issued to compel the performance of an imperative duty, and not in the case of a refusal to exercise a mere faculty or discretionary power.
2. The duties must be of a public or quasi-public nature.
3. The applicant must have some special right to call for the performance of the special act, such as that which is implied, for example, in the relationship of the Local Government Board to a Board of Guardians.²
4. The applicant must have no other adequate and equally convenient and effectual legal remedy available.
5. A *Mandamus* will only issue in cases in which it will be an effectual remedy.
6. There must have been a definite request for the performance of the duty and a definite refusal to perform it.

¹ *Commentaries*, vol. iii. p. 110.

² Cf. *R. v. Leicester Union* 1899. 2 Q.B. 632, where a *Mandamus* issued at the instance of the Local Government Board ordering the guardians to appoint a Vaccination Officer.

7. A *Mandamus* will only issue to command the doing (as opposed to the undoing or reversal) of some act.¹

The writ of *Certiorari* provides another comprehensive means for the legal control of local administration. Like the *Mandamus* the *Certiorari* is an old writ, devised by the Court of King's Bench, and rests upon the well-established theory, that all justice except the justice *Certiorari* of the King's Court is exercised by commission,—that is to say, Judges of Assize and Justices of the Peace have powers delegated to them by the supreme court. Hence arose the practice of referring cases back from Quarter Sessions or Assizes to the Court of King's Bench in London. The *Certiorari* may be defined as a writ directed to inferior courts, commanding them to certify and return the record of a case, in order that the decision of the inferior court may, after a rehearing, be either affirmed or quashed. This writ cannot be refused if the Attorney-General applies for it on behalf of the Crown, nor if the party aggrieved is entitled to it *ex debito justitiæ*. Another distinction between *Certiorari* and *Mandamus* is that, whereas the *Mandamus* applies principally to ministerial acts which the authority or person in question has no discretion to refuse, the *Certiorari*, as was settled by an important case in the middle of the eighteenth century,² will only lie to remove acts of a discretionary or judicial character. The writ is a general remedy which can be applied to all judicial decisions of inferior courts, including even cases from which it has been expressly barred by statute, if, in those cases the court or authority has exceeded its competence or has neglected to take evidence of some essential fact, or if a conviction has been obtained by fraud. But the remedy, though still universally applicable, is less commonly used than formerly, partly owing to the development of the appellate jurisdiction of Quarter Sessions, and still more to the development of a new form of appeal by special case upon a question of law stated for the consideration of the High Court.³

¹ In the statement of these rules we have followed Messrs. Scholefield and Hill's *Appeals from Justices* (1902, p. 178 *sqq.*), where many authorities will be found cited.

² *R. v. Lediard*. Say 6 (1751).

³ Thus it is the duty of Justices in session in case of uncertainty to decide an appeal conditionally and subject to the opinion of the Court of King's Bench

It should always be remembered that, although the competence and jurisdiction of English Courts may well appear highly complicated and obscure, yet long practice and tradition, and the strong sense of duty which pervades English administration of justice, tend to correct these theoretical disadvantages. Practically it may be said that, whenever Justices of the Peace have to deal with any serious and substantial point of law, a way can always be opened out for its thorough and final decision by the first judges of the land. Sharply as the English system contrasts with the simple and logical, but unelastic, divisions of continental jurisdiction, and awkward as its irregularities may at first sight appear, yet on a nearer view it will be found that the administration of justice, though far too costly, and often far too slow, works on the whole easily and well. In the present day the writ of *Certiorari* serves in the province of local government as the ordinary instrument by which the High Court can review the decisions and orders of Justices of the Peace, although, as we have said, its practical importance has been diminished by many statutes which enable Justices of the Peace to state a special case on points of law. In such cases the writ is not likely to be applied for, nor if applied for would it be likely to be granted.¹

The writ of *Prohibition* is described by Blackstone as "a writ issuing properly only out of the Court of King's Bench, being the King's prerogative writ (but for the furtherance of justice, in some cases also out of the Court of Chancery, Common Pleas, or Exchequer), directed to the Judges and parties of a suit in any inferior court, commanding them to cease from the prosecution thereof

upon a suggestion that either the cause originally, or some collateral matter therein, does not belong to that jurisdiction, but to the cognisance of some other court."² The writ serves to prohibit inferior courts from encroaching upon business beyond their competence, and also to prevent any authority from acting when it is improperly constituted. In times long past, this writ was a favourite instrument to upon a question of law. Cf. Scholefield and Hill's *Appeals from Justices*, p. 129 *sqq.* The duty was historically discussed in an interesting judgment by Field J. in *R. v. Chantrell* 1875, L.R. 10 Q.B. 587.

¹ Cf. on *Certiorari*, Scholefield and Hill, *op. cit.* pp. 233-262.

² *Comm.* vol. iii. p. 112.

exclude ecclesiastical jurisdiction from intervention in secular affairs. In modern times the writ has, along with the writ of *Certiorari*, done good service in checking the incursions of the new central departments of government into the province of the judiciary. Thus, for example, it has been successfully used to curtail the quasi-judicial activity of Charity Commissioners and of the Railway Commission.

The famous *Habeas Corpus*, the fourth of these writs, was devised to safeguard the freedom of the person against illegal arrest and detention. This involved a control by the High Court of the action, not only of Justices, but also of many other officers of the Crown, who had the right to arrest and to detain in custody. Since the arrest of the person and his detention were the ancient means of executing the orders of a court, the writ of *Habeas Corpus* developed into a general device for testing the legality of acts of administration or of judicial orders, wherever these involved the arrest and detention of a citizen. A writ of *Habeas Corpus* at the present time may be applied for in the King's Bench Division, or to a judge in chambers during the vacation. It is directed to the jailor, and calls upon him to bring up the prisoner "together with the day and cause of his being taken and detained." Sometimes it is necessary to make a simultaneous application for a *certiorari* to bring up the convictions or depositions. The two Acts¹ which confirmed the writ as against the illegal practices of the Stuarts were only declaratory, and at the present time the writ is usually issued at common law.

The unparalleled control over administration possessed and exercised by the judicial bench of England could not be better illustrated than in the plenipotentiary powers afforded by

¹ 16 Car. I. c. 10, sec. 6, by which any person committed by order of the King or his council contrary to provisions of that Act was to be granted without delay a writ of "*Habeas Corpus*," and 31 Car. II. c. 2 (the *Habeas Corpus* Act 1679), which facilitated and accelerated the procedure. But the case of persons imprisoned for acts not of a criminal character had been left out, and provision was made for these cases later by 56 Geo. III. c. 100. For the writ of *Habeas Corpus* cf. Gneist, *Self-Government*, p. 495; Maitland, *Justice and Police*, p. 130 *sqq.*; Dicey, *Law of the Constitution*, p. 200 *sqq.*; and Scholfield and Hill, *Appeals from Justices*, p. 267-276. For the writs of *Mandamus*, *Certiorari*, and *Prohibition* cf. also Goodnow's *Administrative Law*; Gneist's *Self-Government*, par. 84; Maitland, *Justice and Police*, pp. 45, 46, 103, 104.

these writs. There is not a single act committed or omitted by a central department or local authority which cannot be brought under judicial notice. And the same courts which decide private suits try, and adjudicate in the same way upon, actions brought by, or against, public authorities and public officers. The competence of the English judge is so vast that serious embarrassments would beset the work of government were it not for the peculiar characteristics and qualifications which convention and training attach to this great office. If English judges, like so many of their continental brethren, were civil servants and state officials, who, from the outset of their career, have been removed by disciplinary rules from any free and open participation in the political life of their country, then the possession of such plenary powers would lead direct to government by the bench. But English judges, as is well known, have not had an official training. They are not drawn from the Civil Service, but from the ranks of practising barristers who have usually taken some part in public and parliamentary life. Indeed promotion is often—perhaps too often—the reward of political services. It has proved more necessary to protect public authorities and magistrates against the vexatious claims of individuals than to protect individuals against judicial and official tyranny.

Protection of
public
authorities.

Many provisions of this kind have long existed in various statutes, and were consolidated by the Public Authorities' Protection Act of 1893. Briefly this statute enacts that any action, prosecution, or other proceeding commenced against any person for any act done in the execution, or intended execution, of a public duty shall not be or be instituted, unless it is commenced within six months of the act complained of. Other provisions enable a public authority to tender amends and to avoid payment of costs in cases where they would otherwise have to be paid. There are other Acts giving special protection to Justices and others in certain cases, and indemnifying county authorities against costs incurred in defending legal proceedings taken against them or their officers.¹ The general principle, as appears in the case law relating to this subject, is to discourage vexatious actions against magistrates and persons engaged in

¹ Cf. Local Government Act 1888, sec. 66.

carrying out public work, and to provide that the business done by Justices of the Peace, so long as it is *intra vires* (i.e. is *within* their competence and local jurisdiction), shall not be actionable unless done maliciously and without reasonable and probable cause. A constable is protected if he has done nothing more than execute a warrant. If a Justice makes a mistake his order or decision may be quashed, but he cannot be proceeded against personally. No action will lie against a judge of a court of record for any judicial act, even though it be done corruptly or maliciously. According to Lord Brougham, "The Courts of Justice,—that is, the superior courts, courts of general jurisdiction,—are not answerable either as bodies or by their individual members for acts done within the limits of their jurisdiction. Even inferior courts, provided the law has clothed them with judicial functions, are not answerable for errors in judgment. . . . But where the law neither confers judicial power, nor any discretion at all, but requires certain things to be done, every body, whatever be its name, and whatever other functions of a judicial or discretionary nature it may have, is bound to obey, and, with the exception of the Legislature and its branches, every body is liable for the consequences of its disobedience, and may be proceeded against by the parties who have thereby suffered damage."¹

We have now described the last of the three forms of control to which English local administration is subjected. All three work side by side without any friction. The administrative control wielded by the central departments of the home government, and principally by the Local Government Board, is inferior to the other two, partly because it by no means extends to all branches of local administration, partly because it is not applied in all cases with uniform strength, and lastly because the power of issuing departmental orders, which provides the most important manifestation of depart-

¹ *Ferguson v. Kinnoul* (the Auchterarder Presbytery case), 8 Eng. Reports (H.L.) 412. The effect of this and of other decisions seems to be that no action will lie against a judge of a court of record for any judicial act (however malicious, corrupt, or fraudulent) done within his jurisdiction; and that this principle certainly protects Justices of the Peace sitting in quarter sessions and possibly also in petty sessions. Cf. Scholefield and Hill, *op. cit.* p. 280 *seq.* and the statutes applicable to actions against Justices and public authorities—the Justices' Protection Act 1848 (11 and 12 Vict. c. 44) and the Public Authorities' Protection Act 1893 (56 and 57 Vict. c. 61).

mental authority, is, itself dependent upon the express or implied approval of Parliament. Parliament, therefore, is in reality the supreme administrative authority; for through it alone—in the form of public or private Acts—can the State express its will and prescribe a course of policy to local authorities either severally or collectively. But this form of parliamentary control is mainly exercised in response to the petitions and demands of local authorities in town, district, and county, or of private corporations like railway companies and gas companies. Parliament also exercises its supremacy by way of its executive committee—the Cabinet—and by motions made and questions raised with regard to the conduct of administration. Thus, so far as regards the rules and principles upon which it must proceed, local administration in England may be said to be almost completely centralised in Parliament. But this, as we have shown, is a very different thing from administrative centralisation as understood on the Continent. Within the limits prescribed by Parliament, every local representative body—itsself a little Parliament and Cabinet rolled into one—manages its affairs as it likes, with only so much administrative supervision as is absolutely necessary to secure uniformity and prevent the general interests of the nation suffering from local eccentricity. The sovereignty of parliamentary law and of parliamentary government is perfected and crowned by the position of the Courts. Parliament makes the law, and Parliament, through the Cabinet, controls its execution; but the decisions of the Judges and Justices limit and direct the operation of the law, fit new statutes into their proper context, and set limits upon the activity of the local authorities, so that they may neither fail to perform their duties nor strain the powers assigned to them by Parliament. As Parliament is in history and theory the sole creator, so the English judicature is the sole interpreter of a sovereign law. Thus the system of local government, created and continually regulated by Parliament, is under the uniform control of the ordinary Courts which interpret and enforce the rules of administration prescribed in public and private Acts.)

BOOK III
CRITICAL

BOOK III
THE THEORY AND CRITICISM OF ENGLISH
LOCAL GOVERNMENT

CHAPTER I

GENERAL AND INTRODUCTORY

THE descriptive and expository parts of our work are now finished, and all that remains is to consider theoretically and critically the conclusions which have been reached. And in this task we shall be concerned almost exclusively with German writers, for reasons already explained in the introduction.

The Science of Public Law,¹ as understood and expounded by German jurists, cannot be said to exist, much less to flourish in England. To the English mind the rights of the State are not generically different from the rights of its individual members. Constitutional law is a part of the whole law of the land, and can only be expounded as such. For constitutional freedom broadened, *pari passu* with the freedom of the individual "slowly down from precedent to precedent." Many principles of constitutional law were established, or at least enunciated by the Courts. Others again belong to the customs of Parliament, and demand a study of parliamentary history and parliamentary procedure. From these sources, even more than from parliamentary statutes, must a theoretical knowledge of the law and custom

¹ *Staatsrechtswissenschaft* (droit public).

of the English constitution be drawn. Abstract doctrines about the State and its Right, about the relation of law to ordinance, about the existence and limitations of "subjective public rights," dogmatical excursions upon "State-government" and "Self-government," upon statutory rules and statutory commands, fine-spun controversies as to whether the State should be regarded as a person, as an organism, or better still perhaps as a legal apparition,—all these are favourite topics of German jurisprudence; but few are intelligible to English lawyers, and even those few are seldom discussed.

Practical
character of
English politics
and law.

The reason may well be that Englishmen have never really felt it necessary to find a philosophic basis for their rights and their polity, least of all in modern times. English politicians and learned men have never paid their addresses to the metaphysic of law and government; for centuries past they have preferred to treat questions about the rights of the State as practical problems of politics or of law. In all their great constitutional struggles both sides have handled the controversy as if it were dry law. And so the admirable but far from voluminous literature in which Englishmen of learning have handled their own constitution has been wholly devoted to practical aspects of law and government. To speak of modern times only, Dicey's brilliant work, so often cited in these pages, and the writings of Todd, Erskine May, Hearn, Bagehot, and Anson, all excellent in their way and degree, are examples of the general tendency. True, by the side of this practical constitutional law there has sprung up in England a certain sort of political science, which may serve as a set-off to the political erudition of a German university. To this English literature of political philosophy belong—to speak again only of modern writings—the works of Mill and his friends, of T. H. Green, Lecky, Bryce, Frederic Harrison, Henry Sidgwick, Seeley, Pollock, and other younger men, who, however, almost invariably criticise political institutions and ideas from the standpoint of the utilitarian, the moralist, or the sociologist.¹ Of an abstract legal theory about the State, England, as has been said, remains uninformed; and accordingly, as the greater includes the less, English juris-

¹ Of those above mentioned, Green is nearest to the German or metaphysical school; Sidgwick is the most academic.

prudence is unequipped with a theory either of administration in general or of local administration in particular. So far as English (apart from American) literature is concerned with local government, it takes the form either of commentaries upon Acts of Parliament with the corresponding case-law, or of essays, pamphlets, and newspaper articles upon debatable problems of local government, such as municipal trading or the management of voluntary schools and of public-houses, or the organisation of secondary education, to mention a few of the sharpest and most recent controversies between philanthropists, political parties, and interested groups. That the jurisprudence and political science of Germany has an entirely different conception of the State is a proposition which requires no elaborate proof. In the course of the nineteenth century German theorists have piled, one upon another, widely different doctrines of *Staat und Recht*, which have no indissoluble connection with the political development of the German confederation, nor with the evolution of its political parties, nor with the aspirations which they embody. But, strange to say, these conceptions and doctrines about the State and its authority have been deeply influenced, both directly and indirectly, by the course of political events in England. This influence is only one of the many effects (never yet correlated and comprehended in all their bearings) which the development of the English constitution and the spectacle of a free parliamentary government have exerted upon Germany and other continental countries during the last hundred and fifty years. With the movement as a whole we are not concerned; but there is one aspect of the influence of English institutions upon the political conceptions of German jurists which belongs to our subject, and has had most profound and important consequences. Self-government in England is a simple and intelligible expression. But in the course of transshipment to Germany it has become a mystery. It is "the problem of communal organisation for administrative purposes and of its proper relationship to the central authority." Not only has information about the actual structure of English local government more than once influenced German, and especially Prussian, legislation; but definite descriptions of the English system of

The political
jurisprudence of
Germany.

Importance of
Gneist

administration, and definite judgments upon it, have played a dominant part in an extensive controversy, which traverses the whole field of German political science. A single author has been the principal and almost the sole channel for the communication of English "self-government" to modern Germany. That author is Rudolf von Gneist. In the present book a picture has been drawn of English administration, which in many of its main features presents a complete contrast to the authorised version of Gneist. No one aware of the strong and indisputable influence exerted by Gneist's teaching upon German theories of administration will have failed to discern the outlines of the task that remains to be accomplished. That task is a thorough criticism of Gneist's teaching, with a view to illustrating and clearing up by the light of a conflicting theory the results of our own investigation.

But let us first make sure of what is here meant by theory. Nothing seems to be more dangerous, and at the same time more difficult to extirpate, than the idea that it is possible to deposit certain dogmas about the State which will not only be universally applicable and eternally valid, but will serve as an absolute basis of political science and constitutional learning. Such was the idea with which Gneist started on his tour of investigation, and with that idea fixed firmly in his mind he was able to hang on to the peg of his descriptive account of English government a theory of self-government which he supposed himself to have put together from the actual and working principles of English self-government. To find a substitute for Gneist's theory is far from our purpose. Our investigation rather points to the conclusion that all attempts to derive a universal principle from a description of the development of one State are attempts beyond the range and the power of scientific inquiry. On the other hand it is, without doubt, the purpose of political science, by a historical analysis and comparison of individual States, to obtain a better and more actual conception of what a State is and of the laws and institutions which compose it. But in so doing, it should constantly be borne in mind that in treating of societies—the State as the highest form of collective life is to be regarded as a society—the task

of science is not to construct rigid formulas or logical conceptions which, as they become more general and comprehensive, are only the more empty and futile.' The best thing is to learn to recognise the turning-points of history, and endeavour, by comparing the lives of different States, to disclose those laws of movement which seem to underlie the developments of civilised government. No such comprehensive task is before us now. We are concerned merely with one element in the development of one government. A criticism of the theory put forward by Gneist, will of itself lead us once more to take a bird's-eye view of the great landmarks which tell how England has set out to solve those problems of internal administration which confront modern society. This will give a firm standpoint for criticising the German doctrine of "Self-Government," and it is only the standpoint that we have to gain. To draw the landscape in detail, or to make an exhaustive critical inquiry into the various distinct ramifications of the German doctrine of "Self-Government," is very far from our intention; for English Local Government is our subject. To criticise its critic and expose its exponent is subsidiary to the main purpose.

CHAPTER II

GNEIST'S DOCTRINE OF SELF-GOVERNMENT COMPARED WITH THE ACTUAL DEVELOPMENT OF ENGLISH ADMINISTRATION¹

THE great authority which Gneist's writings upon English government have won and so long maintained on the whole Continent is largely due to the circumstance that Gneist has not been content merely to give a historical picture of the internal administration of England, but has used the results of his historical researches to formulate a new and complete theory of self-government, as a kind of abstraction from the peculiarly English form of local organisation, and has made this theory of self-government a postulate and criterion of political philosophy. Gneist's authority. Gneist has developed this theory, however, with the help, and on the basis of, a definite conception of the State, which conception serves as an axiomatic starting-point for the doctrine that runs through all his historical and descriptive work. All the results of his researches march under the banner of his theory, and take colour from it. The theory also makes itself decisively felt in another way. It gives him a fixed standard by which to judge and measure, not only all previous

¹ The works of Gneist considered in this chapter are *Self-Government*, 1871, and *Englische Verfassungsgeschichte*, 1882. The latter is only a new edition, with slight alterations, of the historical part of his earlier work, *Englisches Verwaltungsrecht*, i., ii., 1867. Much of Gneist's work was written in order to influence Prussian legislation; and in these writings, especially in his book *Verwaltung, Justiz, Rechtsweg*, Berlin, 1869, he is in the habit of repeating, word for word, passages about English government which occur in his more important works. His short history of the English Parliament, *Das Englische Parlament in tausend-jährigen Wandlungen*, is a concise and comprehensive survey of a great mass of material; but, though it far surpasses Gneist's other works in lucidity and literary form, it is based entirely upon them.

epochs of legal and constitutional development in England, but also those modern reforms which have changed the face of the English constitution, and in particular the organisation of government. And so it comes about that in Gneist's picture neither the past nor the present is objectively drawn, but is always coloured by his philosophy. If, then, Gneist's conception of English self-government is to be criticised, it is indispensable that the main outlines of his general theory should be traced, and these, as far as possible, in Gneist's own language.

"The historical self-government of England establishes the organic connection of State and Society." With these words Gneist begins his discussion of "Self-Government" in a chapter which is entitled "The Practical Principles of Self-Government." But the expression "Society," as understood by him, is the symbol of men's relationship to the economic world; the whole of their actual dealings with one another is comprised under the expression "social relations."

Whatever the distribution of property, it results in a dependence of those who have not upon those who have. Hence an opposition of interests and a conflict waged by the propertied classes to maintain their position and by the dependent classes to improve theirs. Society as such is not capable itself of harmonising these interests. But according to Gneist, it is as much the duty of the community to subdue this warfare, as for "the individual to exercise his free choice in overcoming the struggle of his desires and passions with his sense of duty." Therefore, "mankind is always destined to get the mastery of this conflict of interests, and win its way to freedom through the organism of the State,"—that is to say, through a "system of public duties which is constantly being transformed as the structure of Society develops," but is always opposed to the system of social interests. Between the State and Society there is a permanent antithesis. All the machinery of the State is intended to compel the individual, and to prosecute a purpose far beyond him. That purpose, or end, is to found, fortify, and maintain the legal and social freedom of the community and of the individual. On the other hand, "each social group always uses its share of the will of the State to promote its own interests, constantly lays claim to power,

Gneist's
antithesis of State
and Society.

leadership, and the right to decide, but never claims its share of the burdens and sacrifices, or of the responsibility, without which civic freedom cannot be won." Again, "every such group looks at the State from a selfish point of view, and presses incessantly to make the directions of State activity severally and together subserve its own interests." Again, "if Society constitutes from this point of view a connected organism, then there is need of a State counter-organism, which will force the social interests into due subordination to itself, and will unite men, compelling and accustoming them by constant exercise to fulfil their duties. State and Society must coalesce and grow up from below, limb by limb, into an organic connection, in order that a people may acquire the capacity for self-government, for freedom and for order."¹ Gneist, then, passing from his general philosophy to England, finds the "counter-organism" for which he is looking in her old administrative organisation, and calls it "self-government." This organisation, he says, gradually superseded the classes and guilds of the Middle Ages, "which were still occupied with their own interests, with managing affairs in their own way, with raising the necessary levies by their own resolutions. The system of self-government is a system of administrative communities—that is to say, communities entrusted with administrative duties, whose functions and finances are regulated by general laws." Thus Gneist's conception of a self-governing country turns out to be "a country whose internal administration is carried on locally under the general laws in towns and districts by honorary officers who raise the necessary expenses of government by means of rates." It is a characteristic mark of Gneist's "self-government," that it owes its origin to positive legislation. "Self-government," says Gneist, "was the result of royal ordinances for the appointment of officers issued by the Norman kings, which were later developed into organic laws with the co-operation of Parliament." The objects of "self-government" are those functions of internal government which are adapted to be

Gneist's description of "self-government" in England.

¹ The above quotations are translated, word for word, from *Self-Government*, pp. 879-882. Counter-organism is to represent the *Gegenorganismus* of the original.

managed by the personal services and contributions of local communities—"service on juries, as constables, as militia men, the provision of lodging and horses for military services, the assessment of direct taxes, the management of local revenues, etc." Again, "the offices of self-government are filled by superior and inferior officials," who have "the true character of office-bearers," and fulfil lawfully and honourably all the duties and responsibilities of State officials. All important officers are nominated. Where elections take place in this system of self-government, the method followed is the method of equal voting—a consequence "of the mediæval principle of a legal community founded on the idea that personal service to the State is not susceptible of external measurement."¹ The ordinary courts of law preside over administration; for administration and justice are not separated, but are both entrusted to Justices who are the principal organs of self-government. Thus, internal administration is independent of ministers and parties. This system constitutes the bridge between State and Society, and is the essential feature of the so-called *Rechts-Staat*. "Self-government is the foundation of class government, in that it combines the personal duties and financial burdens of owners of property, and gives them political rights to correspond." . . . "The recognition of classes rests upon the circumstance that self-government imposes more numerous and more difficult duties upon the upper classes, whereby they earn a right to a preponderating voice in government by the lawful exercise of public functions. In another sort of State they obtained the same preponderance by means of their superior wealth,—that is to say, by means of a system of political unfreedom." . . . "The absorption of the higher offices of self-government by the propertied classes has led further to the introduction of a property qualification for the magistracy, and for membership of Parliament." Then a paradox: "The practice of making eligibility to the higher offices depend upon the possession of large landed estates is the foundation of equality."² Originally

¹ *Self-Government*, pp. 882-884.

² "Die gewohnheitsmässige Verbindung der höheren Ämter mit dem grossen erblichen Grundbesitze ist die Grundlage der Pärte." The most complacent of Roman senators would hardly have claimed that the *latifundia*, which "ruined Italy," were the foundations of republican liberty.

it was the personal qualification for the office of juryman that gave the active right to the parliamentary franchise, and this historical fact, thinks Gneist, shows plainly that self-government is also the foundation of the parliamentary constitution. "Parliament," he says, "was formed by concentrating the communal institutions, and combining them by means of election and of designation by the King." Take another saying: "Self-government gives community of thought to the whole parliamentary body." Finally, "Self-government is the golden bridge which is alone sufficient to join State and Society into one harmonious whole. From the political point of view it is usually called the balance of powers, from a legal point of view it is the system of the *Rechts-Staat*."¹ The administrative organisation of "self-government" is, Gneist repeats over and over again with untiring iteration, a *System staatlicher Aemter*, an organisation of State functions, the execution of which is entrusted to the local magistracies. The magisterial character of the authorities of self-government stood out prominently in the office of its principal functionary, the Justice of the Peace, round whose original police powers there gradually gathered other administrative business.² The management of local property and the control of local taxation appear as a mere annex of magisterial administration.

Another state of things grew up, says Gneist, owing to the social and commercial development of England after the beginning of the nineteenth century. By the side of Self-government there grew up a second system of "economic or commercial self-government."³ "Owing to the invention of machinery and the application of science to manufacture, the social foundations of the European world were transformed in a manner previously unparalleled. . . . There arose new combinations of property and labour, new associations of landed and other interests; the old orders of society disappeared." The consequences were disastrous in England. "The antithesis between State and Society, of which eighteenth-century England had hardly a suspicion, was instilled into every rank of life,

¹ *Self-Government*, pp. 884, 885.

² *Ibid.* p. 65.

³ *Wirtschaftliche Selbstverwaltung*.

and all classes learned to think first of their own selfish interests, and from that standpoint to measure the permanent and moral conditions of the national life in Church and State." With these new social conditions there was a return of the mediæval tendency to break up the State into isolated local communities, each one with its own interests, its own mode of government, and its own financial organisation. The community ceased to be regarded as a member of the State. "The idea of self-government is transformed. Instead of being a State bulwark against social interests, it has come to mean a mere local grouping of those interests." The new organisation of self-government is marked by the following characteristics. The local interests are given the right of passing resolutions for raising and applying money to the satisfaction of local needs by means of new boards elected by a large number of voters. What is the consequence?

For the duty of the burgess is substituted the local interest of the voter. The assumption of all the functions of administration is made to depend upon free election; the raising and spending of money is made to depend upon free resolution. The regulation of economic self-government is effected, however, not by organic law, which, proceeding from the State and its requirements, moulded the communal bodies into organs of a locally active central authority, but by general laws for towns and districts (*Kreis-und-gemeindeordnungen*), which prescribe the procedure at elections and constitute the determining boards.¹

Selbstverwaltung (i.e. false or economic self-government as opposed to self-government proper) is not, like true self-government, a local employment of the central authority, but is busied with the commercial interests of local combinations; and these interests are connected primarily with finance—in a secondary degree with poor relief, public health, and highways. The proper subject-matters of self-government—service on juries, the management of police, etc.—"are no longer reckoned by the society as belonging to self-government." Besides this change of subject-matter, the old forms of organisation in town and country were altered. "The organs of economic or commercial self-government have lost the official character² which attached to the organs of self-government proper"; and they now appear as the executive

¹ *Self-Government*, pp. 940, 941.

² *Amtscharakter*.

organs of local interested persons. "Freely elected boards choose their own chairman. Office is a pure matter of choice. The elected members of the Boards are unpaid; but their administrative work is confined to resolving and directing, and does not involve personal responsibility. The responsible and toilsome part of local administration is left to paid subordinate officers of the Boards." As regards the composition of the new organs of administration, "Society regards election and self-government as one and the same thing." And again, "as magisterial and judicial functions could not be left to interested members of the local community, they were divorced from self-government and handed over to the State";¹ but owing to the introduction of secrecy by the ballot, election has ceased to be "an act of the assembled community, and so has lost its responsible character." The introduction of a class system of voting, in Gneist's view, necessarily followed the disappearance of administration by personal service. Then came the problem of control. "Society also recognises the need for a court of control, but not being able to change the nature of State authority, it has assigned supreme control to the State in the person of a responsible minister, who represent the national interests, and whose views must always agree with those of the people's representatives." The ministers again entrust their work to departments, which again assign it to inspectors and auditors—that is to say, intermediate officials dismissable at any time, whose business it is to supervise the local authorities and help them as far as possible to keep their administration in line with the national interests. "In this administrative Court of Appeal the old character of administrative jurisdiction is lost; there is no longer a legal protection for the individual citizen against the Government."

Self-government thereupon ceases to be the basis of class organisation; a communal life in which the local elector only takes part every three years by dropping a voting-paper into a box,—a life in which only those who choose need go on to a local board to pass resolutions for the application of public money, and the appointment of local officers,—is no longer a link which holds together classes with distinct interests by imposing

¹ Gneist is thinking of (and deploring!) the separation of the borough bench from the corporation, cf. vol. i. pp. 124, 125 *et al.*

a daily round of duties owed from man to man, unites and reconciles the propertied to the working classes, and accustoms them to live peaceably together. While the "parochial mind" is extinguished, the propertied classes, with their theories of voluntarism, draw further and further apart from the working classes with their doctrines of Communism and Socialism. The State has lost the cement of self-government. . . .

Self-government has ceased to be the foundation of the constitution of Parliament. The House of Lords and the House of Commons have lost their inward connection with county, town, and parish; the franchise is no longer associated with personal service or with the membership of a local community. Eligibility for the House of Commons is no longer linked with the customary administration of the magisterial office. Parliament is now the centre of a conflict of social interests; the golden bridge is broken down; self-government, the strong tie which once bound society with its variety of opinions and impulses to the service of the general will, has been dissolved limb by limb; the press, the franchise, and public opinion no longer express the convictions of the State, of the Church, of the moral law, but of social conflicts and social interests.¹

Such, according to Gneist, are the fundamental ideas of the new system which he calls commercial or economic "self-government." These ideas he believed himself to have discovered in the "social philosophy" of John Stuart Mill — a philosophy which he quaintly characterises by saying that "Mill starts not from the State, but from Society." "Society" sees in the State only a means of realising its own interests, which find their expression through free combination, and through elections held on the basis of general suffrage. True, Mill is not blind to the dangers of this system, and proposes remedies in the shape of plural voting and minority representation; but Gneist holds that these devices are no cure for such an evil as universal suffrage, and describes the whole of Mill's "social philosophy" (as he constantly terms the theory of representative government!) as an altogether unsuitable foundation for a truly moral conception of the State.

Gneist on Mill
and representa-
tive government.

No vital philosophy of local government can come to mankind by way of representative institutions. . . . The vote is the only form of common will known to Society. All sorts of companies and societies for commercial and benevolent purposes are controlled by elective managers and directors. Society has only this one scheme for the management of

¹ *Self-Government*, pp. 941-943.

everything—a company, an administrative district, the constitution of an evangelical church, a mining enterprise, are all formed substantially after the same pattern.

Even if Society is practical enough to perceive that in the State everything depends upon character and personal qualities, the reply is ready.

“Bring them into the system.” The spiritual teacher, the school-master, the impartial judge, the honest financier, the valiant defender of his fatherland, the unselfish advocate of a great idea,—all these are involved in a whirl of interests, in a vortex of “nothing but free trade”; all are subjected to the law of supply and demand.

Sentences like these betray clearly enough the wrong-headedness of Gneist's criticism of Mill and Mill's political philosophy. An exaggerated impression of the political and social views held by the middle classes in the middle of the nineteenth century seized upon the mind of a continental critic who came from a country much behind England in commercial development. Gneist's first and enduring idea of England was obtained in the heyday of industrial capitalism. He found the doctrines of the Manchester School, distorted them, and displayed his caricature as a universal picture of English life and thought. We may revert to this point later; but it may be said here that Gneist's criticism of John Stuart Mill is one of his most serious blunders—a blunder that is only intelligible when allowance has been made for the strong prepossessions and prejudices of the Prussian official. It was the parliamentary reform of 1867, which, in Gneist's opinion, first unveiled the political ruin of England and the downfall of her constitution.¹ If asked for the grounds of this opinion, all Gneist has to say is that “the majority of the two million enfranchised voters consists of taxpayers who are free from the duty of personal public service.” Consequently, the only foundation left for the State is the natural right to equality, and “a State built upon such a foundation is meaningless, undefined, and purposeless.”

Another of Gneist's maxims is that “Society” will not tolerate legislation by Parliament.² To prove and illustrate

¹ Cf., for example, *Self-Government*, p. 728; also *Das Englische Parlament*, p. 389, and many other places.

² “Die Gesellschaft will keine Gesetzgebung durch Parlament.”

this utterly stupefying pronouncement, Gneist can only adduce a proposal made by Mill in *Representative Government* to set up a Standing Committee of Legislation. Here the remark may be interjected that Mill's proposal has never been carried out or even seriously entertained by Parliament.

"Society," continues Gneist, "will no longer ^{The decay of the constitution.} allow parliamentary control over finance.¹ Moreover, the control involved in the necessity of making particular rules of administration amenable to statute will disappear, and the only control over local government left to Parliament will be the political responsibility of ministers for the execution of resolutions passed by a parliamentary majority. The idea of law as a form of public right—nay, the conception of public right itself—disappears and sinks back into the administrative system of the absolute State. The machinery of the State is no longer regulated by law, but by the majority for the time being, which assents to the taxation and expenditure proposed by its minister, who is responsible because his proposals are liable to rejection." No one acquainted with the subject would have divined that in the above sentences Gneist is attempting to characterise modern England and its government. His remarks are expressed in so general and axiomatic a form that the reader would not dream of applying them to a particular country, or of looking about for some concrete basis. Clearly, in his zeal to establish his own theory, Gneist has thrown science to the winds and plunged deep into the waters of partisanship. It is almost comic, after more than thirty years, to read the melancholy forebodings which Gneist borrowed from the temporary exaggerations of a few old-fashioned people, panic-stricken at the approach of democracy, in the middle years of the nineteenth century. "The movement of these ideas of Society," says Gneist, "recalls the movement of the French Revolution from the doctrine of social equality to the Napoleonic system of

¹ With this may be contrasted Lord Welby's statement: "It appears to me that the control of Parliament over the expenditure is now, and has been since 1866, complete. The estimates of the whole public expenditure (the charges on the Consolidated Fund excepted) are annually laid before the House, and the House discusses them in such detail as it thinks proper." See Report of the Select Committee of the House of Commons on National Expenditure, 387 of 1902, p. 231. Lord Welby refers to the Exchequer and Audit Act 1866.

government, with its legislative body, its prefects, and its advisory *conseils*." England, according to Gneist, had set out on the road to despotism. "The course of English constitutional development leaves us to assume that the third generation will live in 'an era of radical action against the old governing classes, and of a violent reaction in their favour. . . . And so all appearances point to the end of the nineteenth century witnessing the same political storms in England as those which after its beginning burst over the constitution of continental countries.'"¹

England to be
saved by the
King.

Fortified by a knowledge of what actually happened in the period forecast by Gneist, Englishmen have no need of the strange consolation offered by the philosopher to the German readers whom he has convinced of the approaching calamity:—

The people of England, like the people of Germany, have not lost the sense of *État*. Should England come to the pass in which France sought preservation in plebiscites and other violent remedies, she would require no extraordinary measures, but would only have to enforce a valid constitutional principle that the Privy Council is appointed by the King, and is lawfully invested with all the executive powers of State. For the laws of the English constitution do not grow obsolete by disuse; and so there is a secret reserve of strength which makes it possible for the State at any time to shake off its subjection to society. The power of the personified State over social incoherency was shown during the Reform Bill of 1832, when William IV. sat on the throne. Since that time, however, a very real strength has been arrayed behind this ideal power of the sovereign; for the rule of interests has now created an organ by means of which the State can itself in case of need regain the mastery over Society: a disciplined array of 100,000 civil servants extending from the centre to the parish; a police force of 26,000 men with their brigadiers and officers; a standing army commanded by men who are ready in the last resort to take their orders from the governing classes—such is the furniture of absolute government which the short-sightedness of the commercial interests has manufactured in the space of a generation.²

Every one of these sentences surely betrays an amazing misconception of things which should be plain to the most superficial observers of English affairs. It is not an *unverfährter Grundsatz* of the English constitution that the Privy Council is invested with all executive power; nor can the civil servants, constables, and officials, enumerated with such eager enthusiasm as the securities for a better future, be

¹ *Verfassungsgeschichte*, p. 723; *Self-Government*, p. 1014.

² *Self-Government*, p. 1015.

looked upon as tools ready to the hand of absolutism, any more than the irresolute and vacillating action of William IV. in 1832 can be exalted into a glorification of "the might of the personified State over incoherent Society."¹

That the narrow and partisan views of politics in general, and of English politics in particular, taken by a Prussian official, brought up on a watery liberalism and on faith in the miraculous power of bureaucracy, are the source of these colossal errors of judgment, might be inferred from Gneist's concluding words: "The Tories must again stand forth as the representatives of the true State, and so save England. The Whigs must see that the concession of universal suffrage does not satisfy the demands of labour, that every surrender serves only to strengthen the vote, and accentuate the danger, of social democracy." It is clear from this that Gneist was not criticising the real England, but an artificial England constructed out of Prussian materials. In 1871, when the words just quoted were published, social democracy was already a force to be reckoned with in Prussia. But he would have looked in vain for socialist politicians in the House of Commons, or, indeed, anywhere in English public life. And the difference, it is needless to observe, has been maintained. The Parliament elected in 1900 contained only one declared Socialist.

As these theories were developed in the sixties, and fully worked out in 1871 (the date of the publication of *Self-Government*), it might reasonably have been supposed that in the course of another decade the contrast between his predictions and events would have taught Gneist to modify his opinions, or at least to soften their expression. But a glance at one of his later works shows that he did neither. In his *Constitutional History*, published in 1882, he criticises the folly of the English reformers and their incapacity for organisation as sharply as ever, although, it is true, he allows that the growth of factory legislation and the increasing interest in public health and in "building" laws indicated the existence

¹ The connection between the officers of the army and the ruling classes of self-government was found by Gneist in the system of Army Purchase. He must, therefore, without doubt have seen the dissolution of the connection when that system was abolished by Gladstone's First Ministry, soon after the second Reform Act! But the late war has shown that the English army still suffers from a surfeit of incompetent aristocracy.

of a ruling class with a worthier conception of its duties. Nevertheless, the internal structure of the State and of Society had changed for the worse. "The people have unconsciously followed in the footsteps of France, where the constitutional State has stuck fast in the mere principle of local elections."¹ It is remarkable that Gneist, in writing down these words, altogether overlooked the fact, that in France for a century the elected representatives of a locality have had no voice at all in government compared with the centralised official staff. But that does not prevent him from noting the progressive decline of local feeling in England. He deplores the suppression of the old parish constables by an army corps of gendarmes, and sees the downfall of English "Self-government," in the fact that the administration of the Poor Law is conducted by a corps of ten thousand book-keepers and clerks. He thinks that the government of the country has become bureaucratic in its main branches in consequence of the new *régime*; that the best forces are withdrawing themselves from municipal life, and that the whole government is dependent, more and more, upon a constantly extending system of Royal Commissions and Ministerial Rescripts. In every reform he sees some new illustration of the moral breakdown, more especially in extensions of the representative system and the introduction of secret voting by ballot.

The elective and rapidly changing boards of administration cannot be organs for carrying out the law, and so cannot exercise magisterial self-government (jurisdiction). Above all, there is seen in these merely elective boards a want of zeal, of business knowledge, and of a sense of duty. Owing to the system of ballot, the elections get into the hands of local cliques, and the inhabitants take very little part; the pressure of taxation from time to time converts their indolence into agitation—then they revert again from agitation to indolence.²

This caricature of the English system of local government may be explained, if an explanation is thought necessary, as a hasty generalisation from some badly governed parts of the Metropolis. Nothing could better illustrate the obstinacy with which Gneist held to opinions formed forty years before than the fact that he could have brought himself to put on

¹ *Verfassungsgeschichte*, p. 722.

² *Das englische Verwaltungsrecht der Gegenwart in Vergleichung mit den deutschen Verwaltungssystemen*, 1883, vol. ii. p. 839.

paper such a judgment as this in the year 1883, at a time, that is to say, when municipal government in England had already achieved so much and given promise of so much more. In his last publication¹ he repeats for the last time these judgments: the mighty edifice of English government now seems to him to be in ruins; it strikes him now more than ever that the most pernicious innovation of all was the introduction of the vote by ballot, which he thinks has cut through the main nerve of parliamentary life. In the new reforms of the local government franchise, and in the new elective bodies, he sees nothing better than "mechanical sterility." Unintelligible instability rules in the newly formed electoral districts, and every change of opinion, like a change in the weather, threatens the existence of a ministry, and makes it impossible to prosecute any continuous scheme of administration. In a word, parties and ministers are now likely to change as rapidly as in France or Greece.²

With this dictum, our long series of quotations from Gneist may conclude. That the learned investigator of the constitutional history of England should at last, by following out his own abstract theories of social and political philosophy, have reached the conclusion that English politics are now on a par with those of modern Greece will give any impartial observer of political conditions in modern England a better notion of the worth of Gneist's theory than the longest criticism.

Nevertheless, it may be of service, in the space which remains, to subject some of Gneist's doctrines and conclusions to closer criticism. The philosophical basis on which his legal and political theories rest is the Hegelian Dialectic—a fertile soil, from which German treatises upon the State have sprouted up in abundance.³ Here, however, it is not sought

¹ *Die Nationale Rechtsidee von den Ständen und das preussische Dreiklassenwahlssystem* (1894).

² Gneist's *Die Nationale Rechtsidee*, etc., pp. 165-167. Cf. Bernatzik's excellent criticism in Schmoller's *Jahrbuch* (1896), p. 746 *sqq.* In the form of a scientific investigation, Gneist was really issuing a party pamphlet. Its value will be sufficiently indicated if we observe that Gneist makes the Prussian system of voting in three census classes (which Bismarck is known to have described as the most pitiful of all electoral systems) the occasion for a philosophy of the census, and glorifies it as the embodiment of political justice.

³ Lorenz von Stein is the Hegelian to whom Gneist is specially indebted, as he himself admits in the introduction to his *Verfassungsgeschichte* and else-

to fit Gneist into his proper place in the calendar of political idealism, or to praise him for the great practical services

which he was nevertheless able to render to the reorganisation of Prussian government.¹

Nor again, interesting as such a digression would be, may we pause to show how, in the hands of the German school of legal history, led by Savigny, political metaphysics has been employed to justify and bolster up absolute monarchy, until the "Kaiser-idee" appears as the embodiment of a supreme and eternal State, divine and sacrosanct, enthroned above and beyond the reach of the subject people. Our concern is simply with Gneist's description of English administration, and with those unreal antitheses which his *a priori* theories and his perverse terminology² have helped him to multiply.

where. For examples of Stein's political philosophy see his famous *Geschichte der socialen Bewegung in Frankreich*, and *Der Begriff der Gesellschaft* (Leipzig, 1850).

¹ The reforms of 1872-75 by which Prussian administration was so vastly improved in every way are undoubtedly to be ascribed in the main to Gneist's writings and parliamentary labours.

² The reader cannot have failed to notice one striking example of Gneist's abuse of political terms. Self-government is used by him not in its ordinary sense at all, but to denote the organisation of internal administration. The word has never been used in this sense either in English law or English literature. When Toulmin Smith's *Local Self-Government* was published, and for some time after, the term was used by the opponents of central control to designate the principle for which they did battle. But since the Sixties, when the controversy died down, the term has lost even that amount of significance. If there is any *terminus technicus* for the organisation of internal government it is local government. It is from Toulmin Smith that Gneist and Lothar Bucher have taken the word self-government, and made it a scientific term for denunciations of the reformed local government of England. How the term was Hegelianised may be inferred from previous quotations. Stein saw a dialectical process going on in the life of communities, an incessant movement between two fixed and immovable antitheses—on the one side the State as the embodiment of self-rule and freedom, as the principle of personality, and on the other side Society as the embodiment of social dependence and as the organism of labour. Gneist took over this conception almost verbally, when he defined self-government as the organism of State created by positive legislation for the purpose of subjugating the tendencies of Society. But he has carried the theory further into the particular province of the English State by constructing a further dialectical antithesis between magisterial and economic or commercial self-government. The latter, which he had better have called representative self-government, is the modern system resulting from the reforms of 1834-1835, and is stigmatised by him as an evil produced in the nineteenth century by the victory of economic ideas over the State. Such is the artificial dualism which Gneist has imported into his historical description of English local government.

The whole picture drawn by Gneist of English constitutional development suffers from two principal defects. In the first place his dualistic conception of administration constantly contradicts the course of history. Secondly, the historical foundations of the conception are themselves open to very serious objection. So much may be said without any desire or intention to slight, or to underrate Gneist's unsurpassed services as historian of the English constitution. It will be remembered as Gneist's permanent claim to scientific distinction that he stood out in successful opposition to the view, prevalent at that time in England as well as in Germany, which traced back the representative elements in the English constitution to the birth of the English State. Gneist has proved to demonstration that the golden era of democracy at the beginning of things is but a fable even in England, and that it is for mythology, not history, to start from an age of Old-Germanic "folk-freedom" to which, after an intervening period of feudalism and absolutism, the nation reverted. English democracy is a new birth, not a re-awakening of the sleeping spirit of Anglo-Saxon liberty. Gneist has performed another great service by showing that England has to thank the Norman kings for an absolute government which enabled her to develop a consciousness of unity and strength at a time when all the great nations of the Continent were disintegrated by feudalism. All this has to be remembered; but it is all the more necessary to affirm that Gneist, even in his survey of the earlier history, allowed his knowledge of what had actually happened to be coloured by his *a priori* philosophy of what the State is or ought to be.

Gneist as a
historian.

Of the errors into which he was thus led, the first to be named is his excessive exaggeration of the creative work done by the absolute monarchy. Over and over again does Gneist assert that self-government—that is to say, the ancient organisation of the English Parliament and Government, did not grow up out of customary law, but was created by positive legislation; it was not, he says, the result of natural tendencies and interests, but came from the wisdom of State which soars high above the conflict of social interests. He is always repeating that "the organic

His exaggerated
idea of the
monarchy

movements of English policy, although they received their first impulse from the struggles of Society, were directed and guided by the King, in Council,—that the corner-stones of the constitution had been laid before the monarchy lost its independent position, before the old Privy Council was transformed into the Cabinet.” He points emphatically to the fourteenth and fifteenth centuries as an epoch of organic legislation on a magnificent scale, of legislation which served to carry out the one grand idea of uniting all the secular functions of State authority with the larger local organisations. In this way, he says, “the people were impressed with a consciousness of duties to the State, were filled with a sense of the unity of the State, and were made capable of organising and managing their own local affairs.” This “deeply-thought-out” legislation “was inspired,” he says, “no less than the Magna Charta by the wise council of a highly trained staff of officials (which had returned to its normal activity after the reign of Henry III.) under the direction of a high-souled monarch.¹ This view is undoubtedly so far right that the King and his Council did for centuries lead and initiate what little legislation there was in England. For England always had a centralised government, whether the King and the King’s authority happened to be strong or weak. But self-government,—that is to say, the organisation of government,—should be described as the product not so much of organic legislation by the King in Council, as of a compromise between the King and Parliament. From the time of William the Conqueror the efforts of the stronger English kings were directed, first, to prevent the building up of political feudalism; secondly, to concentrate in their own hands the whole power of the State. In the first attempt they succeeded; but in the second the Norman dynasty necessarily failed, partly because the conquering element was too weak to destroy the existing foundations of legal and political organisation, and partly because it was only by preserving and building upon those foundations that the monarchy could hinder the growth of political feudalism in England. The characteristic marks of “English self-government” are the maintenance of the old local communities as units of jurisdiction and administration, the localisation of

¹ *Verfassungsgeschichte*, p. 285.

executive authorities within those communities,—that is to say, in the counties, and, ere long, in the municipal boroughs, and consequently the participation of a free people in the work of the State, by service in the army, the law courts, and on administrative bodies. But all these are only results of the survival of a legal and communal organisation largely of Teuton origin, which had been utterly destroyed on the Continent by feudalism. This great historical fact finds visible expression in the maintenance and the unbroken continuity of the Common Law; and therein lies the truly organic character of the developments of English laws and institutions in the fourteenth century. The legislation of the King in Council has an interest for the historian, but its own lasting achievement was that it provided a workable compromise between the centralising tendencies of unlimited monarchy and the desire of the people to keep alive its local organisations and the tradition that only local officers might lawfully exercise public authority. We have seen how this compromise was worked out in the office of Justice of the Peace, the typical institution of English “self-government.” For a century the monarchy had made a number of attempts to create a permanent authority in the country to supplement the periodic functions of the royal judges,—attempts which bore no fruit until the Crown brought itself, not indeed to create an officer who should be elected in the county court, but one who was at any rate attached to the county in which he acted. The union of state officer and local representative in the person of the Justice has an inward meaning which the formal statutes of Edward III. do not express. The indestructible vitality of the office is derived, not from statute, but from that strong love of local autonomy which has always animated all ranks of the people. It was the same feeling that found its elementary expression in the forms and maxims of common law, in the jury, in the County Court and Assizes. It would be still more erroneous to follow Gneist in claiming that the kings of the fourteenth and fifteenth centuries were diligently engaged in thinking out laws and making statutory provision for the necessities of the State. Yet Gneist says they did, and left behind them statutes which linked a personal duty with every political right, and

and of early
legislation.

compelled Society to serve the State." These artificial abstractions obscure history. The truth is that the loyalty of the English to their constitution and common law was a national instinct cleverly used and encouraged by those "highly trained officials" in Church and State, who worked for the Crown against feudalism. In the *francplegium*,¹ an institution which had already been fully developed in the Anglo-Saxon State, lay the seed of a singularly strong and early growth in England—of the idea, namely, that every full member of the community should take active part in public business. Fourteenth-century "self-government" grew out of the rights and obligations of common law, and was consonant with ancient usage, although undoubtedly its form and shape were adapted in various ways to the interests of the two strongest powers in the country, the King and the great Land-owners. What was new in the organisation of government is certainly to be ascribed to the legislation of the thirteenth and fourteenth centuries; but neither that legislation, nor the King and his Council, who promoted it, were responsible for its organic character. Finally, in the fourteenth and fifteenth centuries Parliament (if only by its resistance to the absolutist tendencies, always latent and sometimes emphatically expressed, of the Conqueror's line) was also an important factor in the making of England.

If an over-valuation of the monarch's importance is a prominent flaw in Gneist's history, so is his interpretation of the monarchy in his theory. This is a necessary consequence of the dialectical process which he conceives of as between State and Society. For if it be true that the State must be regarded as a moral conquest over the cross-purposes and selfish impulses of Society, then it follows that the sovereign, who personifies the State and wields its authority, is, ideally at least, independent of and superior to Society. Gneist is fond of observing that this view of the functions of the Crown is peculiar to the German kingdoms of Christendom. It is also, he thinks, a fixed star which should guide alike the historian and the politician. No wonder then that it has exerted enormous influence upon his own theory of the English constitution. With his overvaluation of the King's position and power there

¹ *Friedensbürgschaft*.

is a corresponding depreciation of the popular factor in the development of the English government, and of that tenacious hold on the common law which expresses itself in the history of so many English institutions. So much has been said in earlier chapters upon this subject that the answer to Gneist need not be laboured in detail. It will be enough to refer once more to the cardinal truth that the oneness of law now, as it has been for so many centuries, the foundation of English constitutional life, is only another way of expressing an unbroken reign of common law.

The Common
Law and the
Royal Prerogative.

The idea that law is supreme and indivisible can be traced back through long ages of English history to the primitive rules and precedents which were held to bind the folk and even their chief, the King himself. From the supremacy and unity of law it followed that there was no room in England for the development of a special *droit administratif*, appearing first in the guise of royal rights and afterwards as the public rights (*öffentliches Recht*) of the State—that is, as the sum of the permanent relations between the governors and the governed. On the contrary, these special rules of administration—necessary in some form or another in every civilised country—remained in England an integral part of the general or common law of the land. Hence England never knew what it is to have government free and distinct from law. From the thirteenth century onwards, as Morier observes, the internal administration of England was quite without a professional civil service, because public administration was always the carrying out of law by magisterial officers, and was consequently controlled by the King in Court—that is to say, by the supreme courts of ordinary jurisdiction.

In short, administration was carried out by Justices and controlled by Judges. Accordingly in the slow transformation of the relationship between the Judicature and the Crown lies the real history of the executive of English local government. So long as the King, in virtue of a prerogative developed from mediæval ideas of sovereignty, posed as the authoritative fountain of justice, and with the aid of his Council supervised the execution of the laws made by the King in Parliament; so long as the Privy Council was supreme over Justices, and not only in the sense that it appointed them, but that it

controlled their official activity by instructions and orders; and so long as the King's prerogative to appoint and remove judges of the High Courts remained free and unfettered,—so long, despite the judicial form of the English executive, despite the unity of law, there remained a strong element of discretionary authority in English government, which gathered round the King and found a rallying-point in the royal prerogative. In this half-developed but obvious antithesis between the common law and the royal prerogative lay the possibility that England, too, might see the growth of royal administration and of a *droit administratif*. The possibility drew nearer to realisation when, with the rule of the Tudors and the accomplishment of the Reformation, the monarchy grew in power and activity, and began to make itself felt in every department of administration.

If the King's power rose high under the Tudors and early Stuarts, it rose far higher in the minds of those who, like Filmer, believed in the divine right, or, like Hobbes, in the political necessity of absolute monarchy. These theoretical echoes of Bacon and Strafford and Laud were answered by Locke; and the controversies between Bacon and Coke, between Charles and the Parliament, between Laud's episcopalianism and the puritanism of Milton, were disposed of, or compromised by, the Revolution. Of all the victories then won for freedom and toleration the most conspicuous, complete, and lasting was the final subjection of the King's prerogative to the rule of law. The mediæval idea of the King's judicial authority was swept away; the independence of the judicature was established, and thus the last chance of an English "*droit administratif*" was dissipated along with the practices which had made it conceivable—torn up as it were by the roots from which it had just begun to grow. So it came to pass that King in Court, like King in Parliament, was transformed from a constitutional reality into a mere formal expression. At the very time when the King's influence on legislation was rapidly dwindling before the growth of parliamentary government, the King's will was completely eliminated from the courts of law and from the work of administration. Nothing, then, could well be more misleading and bewildering than Gneist's attempt to characterise English

The eighteenth
century.

constitutional government in the eighteenth century: "Great as had been the extension of legislative activity, the original concurrent relationship between statute and ordinance remained unchanged in the law of administration. In spite of all efforts, the authority of the central government was never absorbed in legislation. The changing conditions of Society from time to time and place to place called constantly for the regulative and preventive activity of the State . . . the needs of municipal life were an inexhaustible source of new ordinances." Having made this statement, Gneist finds himself, as he so often does, under the necessity of qualifying it, and accordingly proceeds to admit that from the time of the Stuarts parliamentary legislation was so much specialised, that it occupied the whole field of internal administration. Yet even with this limitation Gneist's view is untenable. English legislation was not specialised in consequence of Stuart misrule; but always had been, as the statutes of the fifteenth and sixteenth centuries show; because after Parliament had begun to meet regularly, no alteration of the common law, and therefore no grant of new powers to public authorities, could be effected except by an understanding between the Crown and Parliament—in a word, by statute. English jurists, continues Gneist, are mistaken in supposing that the orders and regulations of the Privy Council are limited to the purpose of interpreting and filling in the details of parliamentary statutes. But the mistake is Gneist's own, and weighs heavily in the scale against him. True, three centuries elapsed before the form of legislation by the King in Parliament was fixed; true also that for two centuries longer the scope of the royal prerogative and of the orders issued by the King in Council was uncertain and varied in practice, as the history of Henry VIII., Queen Elizabeth, and of her two successors abundantly shows. But the statutes finally wrung from Charles I. by Parliament swept away at a blow all the innovations of the previous century. The monarchy had played for a part in internal administration, and had lost, although from time to time in the reign of Charles II., and again under the Third George, it proved itself a strong factor in English politics. History, then, has long ago given a final and decisive answer to the question whether the internal

administration of England should develop organically—that is, along the lines of common law, or under the guidance and according to the discretion of the King and the King's government, like a continental State. At the end of the seventeenth century, when absolutism was supreme on the Continent and was able to stamp itself upon the whole organisation of government, the old organisation remained intact in England because it was well suited to the ruling classes who triumphed at the Revolution. The significance of a continuity which preserved the unity of law and its supremacy over administration is not diminished because the constitution, as time went on, was converted by the landlords and their supporters into a fortress of their rule and interests.

If, then, the formulas of Gneist's political philosophy could be seriously adopted as a theory of constitutional development for real countries, and were applied to England, the result would be quite the opposite of that which Gneist wanted and conceived himself to have obtained. If the State,—that is to say the absolute monarchy supreme over all parties,—ever was

Gneist's identification of State with monarchy.

overwhelmed by Society and its interests, that must surely have occurred during the revolutions of the seventeenth and not during the reforms of the nineteenth century. Again, that form of government which was perfected in the eighteenth century, called by Gneist "Self-Government," and explained by him as "the counter-organisation of the State against Society," was in truth a form of government in which all authority was monopolised by certain social and economic interests, and employed by them to their own advantage. Even so the actual development conflicts with Gneist's dialectical abstractions. True it may be that Tudors and Stuarts made the first large experiment in the direction of a socialist monarchy, yet they were far from being the embodiments of "the moral, ethical, will of the State" in the Gneistian sense. On the other hand, the triumphant English aristocracy certainly turned to its own ends the organisation and functions of public authority which it found and preserved; but for that very reason the foundations of national law, national life, and national institutions were never injured by them. Nothing, in short, could be more barren, as we have already said, than any attempt to explain the rich diversities of an ancient

government by empty abstractions like those which Gneist has made his own. There is not, and never has been in England, a State unaffected by, and superior to, social and economic interests. Nor has there been the abstract monarchy which Gneist presupposes as a self-evident proposition. In any case the legislation of the fourteenth and fifteenth centuries, which laid the foundations of "Self-Government," could not be regarded as a proof of Gneist's assumption that the monarchy may be identified with the abstract consciousness of the State. Gneist is equally unfortunate when he characterises the reform of English administration in the nineteenth century as a victory of Society over the State. Gneist takes that view only because he construes the State and the people in the terms of Hegelian dialectic, identifying the first with the monarchy. In working out this dogmatical line of thought, Gneist describes the reorganisation of government effected by the Reform Parliaments as the action of Society against the State, for no better reason than that the English monarchy (excluded long before from the field of legislation) had taken no part in these reforms, and was also losing much of its theoretical influence over internal administration, owing to the gradual withdrawal of the Justices of the Peace (whom it appointed) from administrative work. The emptiness of this argument may be shown in another way. If the creation and improvement of "self-government" in the fourteenth and seventeenth and eighteenth centuries were to be applauded as a transformation of the institutions of the State to suit the social and economic conditions of the age, clearly the destruction of "self-government" in the nineteenth century ought to be applauded for the very same reason!

At a time when evolutionary doctrines have been so generally accepted, no proof need be offered to establish the proposition that every constitutional change of an organic character must be brought about by Society. If, then, we take Society in the sense attached to it by current German philosophy as a term comprising "all groups of men held together by an element of union,"—that is to say, as the people of a State,—it is equally unnecessary to prove that Gneist's conception of State and Society, as a dialectical antithesis, is perfectly useless for the purpose of a scientific or evolutionary study of history.

It is only important to leave no doubt in the reader's mind that the use to which Gneist has put his doctrine about the State and Society in his description of English constitutional development has led him to obscure, or even to hide, the true course of events; and must, wherever it is employed, lead to a mistaken and artificial view of constitutional history. But in the case of Gneist, political dialectic has had another serious consequence. It forced him to pass a theoretical and critical judgment upon modern local government in England, which, although wholly contradicted by the facts, yet has long remained the accepted view upon the Continent, and still retains a large degree of authority among continental students of political science and jurisprudence. Let us consider this matter somewhat more closely.

His criticism
of modern
local
government.

Gneist's theories of "self-government" on the one hand, and of the modern form of English local government on the other, are contained in a series of descriptions, ending characteristically in antitheses, which make it easy to summarise them briefly under four main heads.

1. *Organisation of Government.*—"Self-government" represents an organic union of personal duties and activities with political rights; modern, economic or commercial "self-government" lacks this older element of health and strength, because—

- (a) In place of appointed Justices of the Peace in town and country it substitutes boards elected by the ratepayers; and,
- (b) These new organs are wanting in the official character of the old. Their members have no personal responsibility,¹ and the actual administration is entrusted entirely to paid officials.
- (c) Accordingly, local interests take the place of civic duty as the motive power of administration; instead of the principle of appointment there is an irresponsible election; at the same time a member

¹ This, it may be observed, is a statement which has not the shadow of a foundation. One of the main reasons, as we have seen, for removing county administration from the Justices of the Peace was the grave objection to the expenditure of local rates by a body which was not and could not be made responsible to the local ratepayers.

of a local authority takes up his office from choice, not from duty or obligation, and consequently loses all sense of responsibility for administration.

2. *Centralisation*.—Thus, through the introduction of the vote, the English system of local government has been converted into a mere administration of interests. Its old judicial and magisterial functions (previously exercised along with administration by the Justices), which could not be transferred to the representatives of local interests, "were separated from self-government and handed over to the State." In this way centralisation was introduced, and the purpose of "self-government" completely lost. The national objects of old "self-government,"—jury service, police duty, militia, etc.—were displaced by the purely commercial interests of local associations.

3. *Parliament*.—In the days of "self-government" the old local communities were also parliamentary constituencies. That is no longer the case. The right to vote and the right to be elected for Parliament, which were formerly associated with personal service in the work of local government, are no longer now that the representative principle has been made supreme. In "self-government" England had the "parochial mind," with all its beneficial attributes; the new "commercial self-government" is characterised by the "voluntarism" of the propertied classes, and by the socialistic doctrines of the working classes.

4. *Local Taxation*.—Under the "classical system of self-government" taxation was only a convenient substitute for personal service in particular cases, and as such was of secondary importance. But the nineteenth century saw "a transition to pure commercialism." The province of local taxation was extended to purposes previously unknown, and linked with a system of local representation, until it has become the main business of "commercial self-government" to raise money to satisfy the needs of "Society."

These abstractions and antitheses, with their medley of truth and error, with their measureless exaggeration of particular phenomena, with their dogmatic assertions and generalisations, are typical of Gneist's method. Above all, Gneist is thoroughly wrong in maintaining that, with the reform of

English government, the personal activity of the citizen in public life has dwindled and almost disappeared. The truth lies in the precise opposite of this proposition. The old "self-government" had, really reduced to a minimum the self-governing activities of the people. It is enough here to refer to the description, given in our historical survey, of the uncontrolled supremacy of the landed gentry in the internal administration of towns as well as of counties, and to the corruption of the close corporations and select vestries which ruled in town and parish.

The resolute application by "Society" of radical cures to the diseases of the body politic—for the passing of the Reform Bill was, according to Gneist's own language, a triumph of "Society" over the State—ranks among the very greatest achievements of Parliament. The amendment of the poor laws, of the Municipal Code, and of the rest of the reform legislation, consisted, according to Gneist, in the creation of authorities to pass resolutions, to incur expenditure, and to appoint paid officers. Their real purpose and effect were to enable the middle classes to take once more an active and predominant part in local administration. When Gneist harps upon the "official character" of the organs of "self-government," and makes the want of it a principal flaw in the new commercial system, he is again totally wrong, misled by those German ideas of administration which he constantly

The reformed
administration
of local
government
vindicated
against Gneist.

applies to English law and its institutions. What Gneist calls "the official character" is simply the judicial character of the Justice of the Peace—a character which he still preserves, though he has now lost most of his adminis-

trative functions. Officials in the German sense,—that is to say, special administrative officials responsible to the sovereign for the exercise of functions delegated by him,—have never existed in English local government. It is of course true that Boards of Guardians and the Councils of counties, districts, and boroughs, which have taken over the administrative business of Justices of the Peace, are not judicial authorities. But, quite apart from the advantage of representative over nominated authorities, and apart, too, from the necessity of adapting the organisation of local government to the new

democracy, the mere separation of administrative from judicial functions, effected by the creation of a local council distinct from the local bench, was in itself a long step forward on the march of political and administrative progress.¹ But the transference of local administration from magistrates appointed by government to local authorities elected by the local communities has not, as we have seen, in the slightest degree shaken the supremacy of law over administration. On the contrary, the change has fortified the rule of law, for the simple and obvious reason that an act of administration performed by a mere administrator is more easily challenged in the courts than the administrative act of a magistrate.

And from another point of view exactly the opposite has taken place of that which Gneist is never tired of asserting to be the consequence of the new "commercial self-government." After a long period of exclusion, or practical incapacity, the middle class as a whole was again enabled to take personal part in administration, and then, after a period of middle class government, the working classes also were called to the service of the State. The franchise reforms, which conferred political rights upon the masses, were followed by administrative reforms which imposed new administrative responsibilities upon them. When Gneist asserts and re-asserts, by way of combating these facts, that the new local authorities are irresponsible, because they cannot be compelled to take office, the philosopher is beating the air with sophistries which do not deserve to be called arguments. As a matter of fact the legislation with which Gneist was dealing maintained the old obligation to take office which had prevailed for centuries under "self-government."² Gneist's criticism of the work of the new authorities in town and country was equally wide of the mark. No one with even a superficial knowledge of English local government in the nineteenth century can

¹ Gneist's description of Justices as local officers appointed by the King is also misleading, resting as it does on the form of the commission. After the Revolution the appointment of Justices, along with the other prerogatives of the Crown, became an instrument in the hands of the ruling oligarchy. So that even in the eighteenth century (Gneist's classical era of self-government proper) the Justice of the Peace was only in form an officer of the King.

² Parish Councils (created in 1894), are the only local authority upon which qualified persons are not obliged to serve under penalty of a fine.

understand how Gneist could have maintained for thirty years that, with the suppression of so-called "self-government" (that is to say, the oligarchic rule of Justices of the Peace), local spirit and the sense of duty disappeared from England. Once more the direct opposite is the truth. Let any one remember in what unexampled corruption "self-government" involved the municipal corporations of England, how in many places public spirit and even respect for law dwindled or vanished, and he must concede—if he takes an independent and impartial survey of the last half century of municipal government—that the Reform Acts, described by Gneist as an inundation of the State by Society, did in truth unseal the fountains of public life in England and set free the streams of local spirit and genuine self-government. This book has been concerned with the structure and working, only incidentally with the work of local authorities in England, but the marvellous increase in the efficiency of local government and the equally marvellous growth in its functions since the reform of municipal corporations are acknowledged facts, which call neither for proof nor illustration. The only question is to what the improvement and extension are due. The answer, however, has already been given in our description of the modern organisation of local government in England. And that answer is in itself the only complete and satisfactory refutation of Gneist's theory. From this point of view it is significant that Gneist passes over in absolute silence the device which most clearly expresses the new birth of self-government on a democratic basis. He has undoubtedly failed to understand the meaning and importance of the committee as the means, not less simple than elastic, by which true self-government has set its machinery at work. He has therefore missed the key which unlocks the secret of modern English local government. The committee system has given a simple solution of a difficult problem: how the principle of representative government, made effective, so far as Parliament was concerned, by a simple extension of the franchise, should be actualised in local administration and the citizens of the State be brought into living contact with public work at the same time that they were endowed with political rights. Here again Gneist

The committee
system.

failed to understand a contrivance foreign to his experience and alien to his mind. It conflicts with his *a priori* scheme, which bound him at all costs to construe the good old "self-government" of England and the bad new government of the nineteenth century as dialectical contraries. If the one, as Gneist the historian rightly showed, had been the life-blood of the body politic from the first, then the other, being a deviation from the principles of true "self-government," must necessarily involve its overthrow and ruin. A doubt never seems to have crossed Gneist's mind as to whether, after all, the life of the English, or of any other, body politic ever has followed the dialectical process or ever has ended in dialectical antitheses.

The new Boards and Councils have revived the personal participation of citizens in the business of public administration; energy has been allied to economy and efficiency. Technical skill has been applied for the first time by public bodies to the conduct of local interests and to the management of local undertakings, thanks to another innovation, to which Gneist points with biting scorn as a proof of English decadence. That innovation is the introduction of trained staffs of paid officials, into the service of local government. One of the principal features of aristocratic "self-government" was its subordination of efficiency to the maintenance of class rule. If a paid official was absolutely necessary it regarded his appointment as a bit of local patronage, in the gift of the local gentry. An executive office like that of overseer or constable was in form honorary like that of a Justice, but poor men were not likely to collect rates or make arrests for nothing, and consequently an assistant-overseer and a parish beadle got paid somehow or other, and were looked upon as poor dependents of the nearest squire. Consequently the English system of police, with its honorary service of parish constables, had provided no real security, and was the laughing-stock of English satirists long before it came to an end. In many municipal boroughs the corruption and decrepitude of the corporate officers and magistrates were so flagrant that special commissioners were usually elected under private Acts for the main purposes of administration, such as paving, lighting, and

The need of
the trained
expert

police. These Improvement Commissioners, with the aid of paid officers and servants, did the work left undone by the Corporations. By the Acts of 1834 and 1835 the representative principle was made operative in two large provinces of local government, and the people were soon taught by practical experience that a well-paid staff, so far from being a contradiction, is a necessary condition of local self-government. It is only another consequence of his fallacious doctrine that Gneist should have pointed at the *Gendarmeriecorps* (i.e. the efficient police forces established throughout the country to take the place of the useless parish constables), and at the competent paid staffs appointed by municipal councils and Boards of Guardians, to illustrate his thesis that England has proved untrue to her glorious tradition of civic activity and "self-government." To a mind unfettered by formulas and antitheses it must be plain that a great industrial society of

and the proper
work of the
councillor.

the nineteenth century cannot be governed in the style of the seventeenth or eighteenth. It requires for its public work and enterprises a large, highly trained, and technical staff of officials. Modern "self-government" is and must be quite different from the self-government of two hundred years ago. A town like Liverpool or a county like Lancashire, with all their busy wealth and teeming industry, require, and can well afford to pay for, more effective protection and security than would be afforded by amateur constables. Nor could the city fathers of Leeds and Manchester possibly look after the municipal supply of electricity, or personally conduct the city trams. Under modern conditions local "self-government" is not to be obtained in the old-fashioned way which Gneist's theory presupposes. A citizen cannot serve the public by taking a hand in the thousand-and-one employments which the government of a large modern city involves. It is for him, as the freely elected representative of the community, to help to form the policy, to direct public activity, to guide a huge complicated machine of government. This is only possible if the staff of officials is appointed and organised in such a way as to afford security, loyalty, and discipline in execution. For this purpose and for the creation of a real self-government the old forms of "self-government," with its obsolete imposture of unpaid

service and its oligarchy of patrons and dependents, had to be broken up and new forms of organisation substituted.

Lastly, when Gneist characterises the introduction of centralisation into English government as a deplorable blunder and as a fatal change in the constitution, he is sufficiently answered by the descriptive parts of this work,¹ which show that the introduction of a central control or superintendence of local government, working within definite and fixed limits, was made necessary and desirable by the increased technique of administration, by the growth of a new social economy, and by the increasing number and difficulty of public duties and undertakings. Central control. Still obstinately impervious to the facts, Gneist proceeds to describe this development by saying that the commercial interests of the local combinations would have got the upper hand of "the essential objects of magisterial government," and so the latter were declared national purposes and centralised in a department of the "State." What Gneist means by the essential objects of government are the administration of justice, police, and gaols, the control of the militia, and the supervision of labourers—a few simple functions which almost sufficed to govern a country of agriculture and handicrafts. According to the ideas then in vogue, public administration was not concerned with the regulation of public health or buildings, to say nothing of "municipal trading." The new conception of municipal work, with larger scope, longer views, and higher ideals, has been sanctioned by parliamentary legislation, and every branch of local administration, whether obligatory or permissive, is carried out in strict pursuance of statutory provisions. When Gneist disparages these activities and declares that they proceed from "the particularised interests of local combinations," he shuts his eyes, not only to the needs of modern communities—for happily the luxuries of the past are the necessities of the present—but to the strictly legal basis which Parliament has created for their satisfaction. With the advance of intelligence, the spread of education, and a general rise in the standard of comfort, the people of England have learned to expect and to obtain more from the State. It is a remarkable proof of their political sagacity

¹ Especially Book II., Parts VI. and VII.

that the development of public health and of public education, the municipalisation of natural monopolies, the creation of parks, libraries, museums, public baths, and other amenities, have been brought about without any infringement of the rule of a single law and single Parliament. The new local authorities, in exercising all their manifold powers and duties, are merely carrying out the law under the control of the ordinary courts, just as the old Justices did in exercising their handful of police functions.¹ At the same time, some of the oldest and elementary functions of self-government, originally local, have now been recognised as national or quasi-local only. Parliament has recognised that an obligation to defray the expenses of police, gaols, lunatic asylums, education, etc., rests wholly or in part on the State. At the same time, it was felt that the need for uniformity in these national or quasi-national services is greater than in services of purely local interest, and is not fully satisfied by the legislation of a central Parliament and the control of the judicature. Accordingly, grants-in-aid from the national exchequer were associated with a methodical supervision of the subsidised services by special departments of the central government. How cautiously the system of central control was constructed and put into operation has already been explained, and particularly in connection with the police—a service which had been so miserably mismanaged by “magisterial self-government.” No doubt the great weight attached by Gneist to police administration as the central point of State life was due to his transference of German ideas to English things. Since the Norman “Vice-Comites” were

¹ Gneist's antithesis between magisterial (*obrigkeitlicher*) and commercial (*wirtschaftlicher*) self-government is therefore fictitious. The transition from the old magisterial administration to the new representative system of local government was a gradual development. In the eyes of the law there is no difference between the administrative act of a Justice in the old days (say the relief of a pauper) and the administrative act of a modern sanitary authority (say the construction of a sewer). In either case the thing done must be authorised by law and must comply with the provisions of the law; and in either case this vital point of legality can or could only be decided by an ordinary tribunal. In other words, in the eighteenth and nineteenth centuries alike, the only English “*Obrigkeits*” was a court of law. Gneist is quite wrong in calling the old Justice in his administrative capacity an *Obrigkeits*. He was no more of an *Obrigkeits* than is the committee of a modern council.

abolished, England has not been ruled by royal instructions and punished by policemen; never since then has her internal government taken the form of a police regiment. It is the more stupefying, then, to find Gneist, fresh from the Prussian policy of the Fifties, projecting Prussian ideas into a picture of England's future, as when he relieves his forebodings by casting a hopeful glance on the "*Gendarmeriecorps* of 20,000 men," which Society, he says, has unconsciously provided for the coming of an absolute monarchy. Central inspection of the local police forces and of other branches of local government has not taken England a single step on the road to a police-state; yet Gneist actually regards the system of central control established in England—in which the Local Government Board and other departments are little more than technical advisers of the local self-governing authorities—as "a system held together more and more by royal commissioners and ministerial rescripts, almost unintelligible from the standpoint of German municipal life, and not permanently reconcilable with the vicissitudes of party government." Could any one, acquainted with German and English administration, hesitate, if asked to say which is more dependent on royal commissions and ministerial rescripts? So far from being held together by royal rescripts and commissions, English local government owes its construction and maintenance solely to the public and private legislation of a sovereign Parliament. Gneist's delusion arose, no doubt, partly from the controversy between Chadwick and Toulmin-Smith, which was raging in the Fifties, when Gneist first became acquainted with England. That controversy, which centred in the Board of Health, has already been de-

Influence of
Toulmin-Smith.

scribed. It never played any great part in English politics. Neither Tories, nor Whigs, nor Radicals were willing to be identified with the extreme views of either doctrinaire—of Chadwick, to whom a Central Board was everything, or of Toulmin-Smith, who could see no good thing outside a common law vestry. But although it was not of political consequence, Toulmin-Smith's agitation led to a practical result—the dissolution of the Board of Health; and his controversy with Chadwick is interesting because it is the only important *theoretical* dispute upon the subject of internal

administration which has taken place since the era of reform. In the writings of both sides we find the same dogmatic and *a priori* methods; for Chadwick fought with the weapons of Bentham's utilitarianism, while Smith used those of the historico-romantic school of law. According to Toulmin-Smith, local self-government was founded on two great institutions of the common law,—the jury and the parish. These institutions were, in his view, the only two organs of public authority which could be employed constitutionally to decide points of law and to carry on administration. He regarded the appointment of Justices by the Crown and their exercise of summary jurisdiction as a violation of common law, and he thought that the principles of the common law were unalterable even by Parliament. This theoretical war of books and pamphlets made no great impression either on the masses, or on the middle classes and their parliamentary representatives. It was only when the controversy found a point of direct practical importance in the movement for dissolving the Board of Health that Toulmin-Smith succeeded in getting a following in a number of English towns. The truth is, that the prospect of higher rates which Smith was shrewd enough to associate with the new sanitary legislation had more influence than all his legal theories and historical erudition. But, as we have said, the conflict of centralisers and anti-centralisers was never taken seriously in English politics; and in the course of a few years, as we have seen, Parliament—theories or no theories—passed a series of measures which provided a practical solution of the problem of central control. That solution was a compromise between the doctrines of Bentham and the dogmas of Toulmin-Smith.¹ But Gneist

¹ In connection with this controversy may be noticed the numerous and striking coincidences between Gneist's books and Lothar Bucher's *Parlamentarismus wie er ist*—coincidences in the underlying thought as well as in many of its results, and sometimes showing themselves in a noticeable similarity of style. Bucher's book appeared in 1854, Gneist's first descriptive piece, *Geschichte und heutige Gestalt der Ämter in England*, in 1857; and without doubt, Bucher exercised a great influence upon Gneist's political judgment. But the main reason for their agreement seems to be a common use of the same source—namely, Toulmin-Smith. The dogmatic pedantry which deprived Smith of any consequence in England ensured him a great reception at the hands of these two sham Liberals of Germany; it was from this barrel that Bucher and Gneist drew off those frothy phrases about "the destruction of the

thought that the fire which he saw lighted in the Fifties was a great conflagration of English institutions. He prolonged the struggle about central control long after it had been quietly settled, and conjured up bogies of an England, invaded by French ideas and eventually subjected to a new centralised monarchy, which would save the "State" from parties and "Society." To these fancy pictures must be added another darling of Gneist's imagination, viz., The unorganic character of the reformed Parliament. Parliament, he seems to have argued, consists no longer of knights of the shires and delegates of the towns, but of deputies sent from electoral districts carved out of the old divisions.

Now there was, it is true, an organic connection ^{Connection between Parliament and local bodies.} between the historical constitution of Parliament and historical local government, or, as Gneist called it, "Self-government." They are the two main expressions of the system maintained for a century and a half by the ruling territorials. But when democracy was substituted for oligarchy as the basis of parliamentary representation, it was evident that the popular element must also enter into local government. Gneist points out that the old communal bodies were the foundation-stones of Parliament, and complains that they are so no longer under the reformed system of local government. It is true that neither the close municipal corporations nor the landed gentry, who monopolised the county benches, are the foundation-stones of the reformed Parliament; but none the less is the organic connection between Parliament and local government maintained, not only by the similarity of the franchise itself, but in a higher and truer sense by the close connection which exists between the lower and higher forms of public activity: The work of municipal and county councils and of the lesser local bodies is a school in which politicians and statesmen may gain experience. Here again Gneist is convicted of a perverse and wrong-headed *laudatio temporis acti*. He sighed for the old "coherence" of parliamentary constituencies and forgot, or chose to forget, the almost universal corruption which prevailed until that coherence was disturbed by the Reform Bill

popular institutions of Common Law," "The *Gesetzgeberei* of Parliament," "The impotence of Statute Law," "Boards, another name for bureaucracy," and so forth. Cf. especially Bucher, chaps. iv.-vii.

of 1832. As early as the fifteenth century Parliament had acquired a representative character, and this was revived and vindicated in 1832. Yet Gneist regards a reform which swept away the pocket and nomination boroughs as a reactionary measure by which self-government and the sense of public duty were destroyed. Old Sarum and a sense of public duty! Is a sense of public duty strongest when it is bought and sold? And does self-government rest on patronage and corruption? If so, Gneist may be forgiven his zeal for the "solidarity" and "coherence" of the unreformed Parliament. But until nomination spells representation and oligarchy self-government, Gneist's unmeasured condemnation of the reformed Parliament and all its works must be deemed to be no more than the crotchet of a political antiquarian, who will not allow the historical method and the development of law and institutions to go beyond the point at which they begin to clash with his political opinions and his preconceived theory of the State. His numerous disciples, who herald the decline of parliamentary government and point with special satisfaction to the collapse of the "mother of all Parliaments," are equally dogmatical and equally nonsensical. They have the same bias against liberty, and the soil upon which they build their arguments is the same Pomeranian sand.¹

Last of all, in his treatment of local taxation in England Gneist again shows those tendencies to one-sidedness and exaggeration, of which we have already had enough and to spare. One of the essential points in his definition of "self-government," is that the costs of administration are paid by a local rate on real property. Here, again, it should have been

¹ Modern England also has its unfriendly critics and opponents of democracy. In an earlier generation Sir Henry Maine's *Popular Government* was perhaps the ablest example of this kind. Of the more considerable works by living writers the most violent is Professor Lecky's *Democracy and Liberty* (1896), an incoherent work flavoured with arguments that often recall Gneist. A convincing reply to Professor Lecky was given by Mr. Morley in the *Nineteenth Century*, May 1896. In that essay Mr. Morley exposes a number of the inconsistencies, false trains of reasoning, and other deficiencies which occur when philosophers, with no firm hold of the actual course of events, reason deductively from hasty generalisations about political tendencies. It is difficult to find any evidence that these criticisms of popular government, though fashionable in a small way and well adapted to the taste of a cultured minority, have had any real effect. They have not induced the self-governing democracy to distrust itself.

clear that the development of local rates in England in the seventeenth and eighteenth centuries was not a category of philosophy, but a historical product—a natural result—of the economic and political forces of the period. It should have been equally plain that the industrial revolution which began at the end of the eighteenth century and the great political and administrative reforms which eventually followed must lead to financial changes and to a reform of the system of taxation. But Gneist maintains that the taxation of the occupier of visible immoveable property in a parish is the one and only correct principle of raising money to meet the expenses of local government.¹ It is highly characteristic of Gneist's methods that he is more favourable to the financial organisation of modern "commercial self-government" than to its other aspects; and solely because no radical change has yet been made in the old law of rating. He concludes, therefore, that householders are still bound together by a "secure material link." Yet the inequitable incidence of local rates and the unsatisfactory condition of local taxation generally have been a favourite theme of Conservative and Liberal statesman alike, for more than half a century. The plan of dividing rates² between the owner and the occupier has the authoritative sanction of the present Lord Goschen. Large inroads have been made upon old principles by the system of grants-in-aid, which has been carried

¹ In addition to the works and official publications previously quoted and referred to upon the subject of local finance, it may here be mentioned that the leading German authority is Adolf Wagner, *Finanzwissenschaft, Specielle Steuerlehre; Die britische und französische Besteuerung*, 1896, par. 10. As Wagner observes very truly, the rapid rise of grants-in-aid proves that the system (which Gneist describes as the only correct system) of raising local revenues by rates imposed on the occupiers of real property is not altogether satisfactory. But the most convincing evidence on this subject will be found in the recent reports of the Royal Commission on Local Taxation.

² This important proposal escapes the attention of Gneist, who directs all the fury of his financial criticism against the device of compounding rates—which he entirely misunderstands, thinking it means that the rates of small householders are to be paid in fact as well as in form by the landlord. The object of the contrivance is of course simply to save inconvenience; and the percentage allowed to the landlord is more than sufficient to cover the risk and trouble of collecting. The tenant pays his rent and rates together to the landlord, and the landlord hands on the rates to the local authority. Yet Gneist declares with absurd solemnity that the tenant thereby loses his legal "basis of participation in municipal life."

out mainly under Conservative auspices. A Radical scheme for the taxation of ground values has the support of Lord Balfour, a member of the present Cabinet (1902), who acted as Chairman of the late Royal Commission on Local Taxation. Another reform strongly urged by many municipal authorities is the rating of unoccupied land in towns. The late Chancellor of the Exchequer (Sir Michael Hicks-Beach) has admitted the propriety of increasing the revenue derived from public-house licenses. A Bill is brought in every year for the rating of machinery, and is, as a rule, strongly supported by the representatives of agriculture. In a word, the one department of "commercial self-government," of which Gneist approved, is the one department which gives unmixed dissatisfaction in England. The introduction of the representative principle into local government, which spelt ruin to Gneist, is neither questioned nor criticised. It has even been extended by a Unionist Parliament, without opposition, to all parts of Ireland. Whatever forms of organisation may be created or dissolved, the cardinal principles of representative democracy have taken firm root in the representative institutions of England. Further changes will probably be made in the system of education, and of poor relief, as well as in the law of licensing. But changes in the organisation of local government will not shake the elective principle. Parts of the superstructure which have been described in these pages may be altered, restored, or even rebuilt, but the political basis must remain. It is in the relation between imperial and local finance and in the system of rating that fundamental reforms are to be expected in the near future. If this work helps students of English local government to understand its possibilities and appreciate its value, if it helps to spread knowledge of institutions so gloriously old, yet so vigorously young, if it does but aid and stimulate a higher kind of political and legal criticism, if for the jealous distrust which obtains in some quarters it can substitute a cautious and informed faith in the vital principles of English democracy, it will not have been undertaken in vain.

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